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ABSTRACT

As the fourth volume in a five-volume series of position papers on Indian education, this publication presents seven papers relative to the technicalities of the financial, political, and legislative problems of Indian education. Papers are titled as follows: (1) "State Responsibilities for American Indians--Minnesota" (the question of Federal versus State funding); (2) "State Responsibilities for American Indians--Texas (the success of the Tigua Indians of El Paso, Texas in gaining State support); (3) "Jurisdictional Problems of Indian Controlled Schools" (the problem of providing Indian people with the monetary, informational, and manpower resources to secure effective control of Indian schools); (4) "Public School Financing Considerations for American Indian Education" (numerous educational finance models are presented); (5) "Federal Financing of Indian Education" (documentation of the laws and programs earmarked for Indian education with an explanation of the way in which both can be subverted); (6) "Sources of Financial Aid for American Indian Students" (emphasis on Federal sources other than BIA higher education funds); (7) "Federal Treaty Responsibilities for Indian Education" (consideration of the types of educational provisions found in treaties in view of the future of Indian education). (JC)

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Indian Education Confronts The Seventies

Five Volumes

Volume IV

Technical Problems in Indian Education

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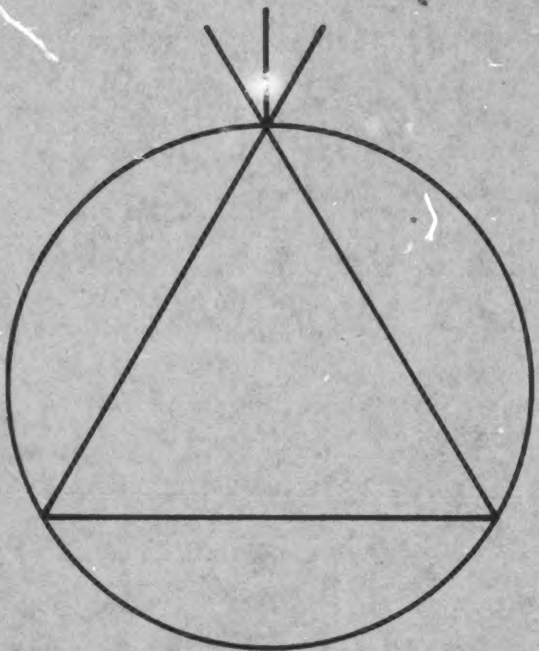

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This five volume series of Position Papers on Indian Education has been printed by the American Indian Resource Associates in conjunction with the Navajo Community College of Tsaile, Arizona. The papers were prepared under a contract between the Office of Education and the Navajo Community College, OE-0-73-7094, which was in turn subcontracted by the Navajo Community College to the American Indian Resource Associates, Oglala, South Dakota, Mr. Gerald One Feather, President.

The respective papers have been edited for publication by Vine Deloria, Jr, Golden, Colorado who supervised the preparation of the papers and the format of the five volumes. Copies of the longer and unedited original papers are available through the Indian Education Office of the Department of Health, Education and Welfare. The opinions expressed herein do not necessarily reflect the position or policy of the Office of Education, the Navajo Community College, or the American Indian Resource Associates and no official endorsement by any of the parties should be inferred. The papers are presented in an effort to open discussions of the future of Indian education by presenting some fundamental and provocative papers on selected topics of importance in the field of Indian education.

We would like to express our appreciation to Mr. John Tippeconic of the Navajo Community College and Mr. Larry LaMoure of the Office of Education for their assistance in developing these volumes.

Vine Deloria, Jr.
Golden, Colorado

Indian Education Confronts The Seventies

Volume IV

Technical Problems in Indian Education

Edited by Vine Deloria, Jr.

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INTRODUCTION

by

Vine Deloria, Jr.

In this volume we present some of the technical problems that must be faced in Indian education. While philosophies of Indian control and determinations of new curricula and learning methods occupy a vital place in educational programs the fact remains that any educational program must be related to the great structural institution which we know as education in all its forms. Not only are we concerned with relationships to the educational establishment, both state and national, but we must also deal with the political entities that support and control them. Education has an important political aspect over and above the usual political reality of counting the votes and that is that it provides a context within which education may be determined by the values and mores of the politically organized community. In that way, Indian controlled institutions become not simply Indian institutions but reflections of the political ability of Indian people to respond to their own problems.

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George Goodwin and Skip Finn review for us the history of Indian education in Minnesota from the coming of the White man until recent times. From the very first treaties and agreements there has been an implied responsibility of the state to provide for its Indian citizens but this responsibility has been obscured by the ongoing relationship between the Indians and the Federal government. The argument has always been that Indians do not contribute sufficient income from taxes to justify the state providing educational services to the Indians. The fact that the state has reaped the benefits of the massive land cessions from the tribes seems not to have affected the attitudes of state officials. Goodwin and Finn point out that with the coming of Federal programs designed to provide additional funds for Indian education that the state education officials have relaxed their firm stand on providing educational services to Indians. The reality of Indian existence in state educational departments is that without Federal funds most Indian communities remain obscured by the continual arguments of taxation. When Federal funds become available, Indians become a desired commodity on the educational market.

Tom Diamond's article illustrates the point with respect to those states that do not have Federally recognized tribes within their borders. In those cases, he warns that Indian communities do not generally get any services unless they are armed with the big stick of possible Federal and state liability for services to Indians. The experiences of the Tigua Indians of El Paso, Texas provide an example of how tribes can be helped by states if those tribes possess sufficient political and legal clout to make their case stick.

We also present a variety of articles on the very technical aspects of funding Indian educational programs. Eric Van Loon and Francis Killer review some of the laws under which Indian projects are authorized and funded and some of the problems they face. Van Loon makes it clear that with the multitude of laws authorizing funds to be provided for Indian programs and the lack of adequate monitoring of these programs that most funds and programs do not fulfill their designated mission. It then becomes a matter of continual agitation and controversy to get the Bureau of Indian Affairs and the respective state educational agencies to perform the tasks required of them under new legislation or old existing programs. Until some order is brought out of this chaos there can be no assurance that Indian education will make any substantial gains.

Francis Killer makes a very important point in his essay on Indian controlled financial structures in the field of education. He points out that a myriad of services exists already in the Federal handling of education that is not always apparent to school districts considering the establishment of their own schools. One of these is the retirement plan offered by the Civil Service and the corresponding fringe benefits that a massive Federal structure can offer individual parts of its own program. Until Indian schools are allowed additional funding to provide these services for themselves or until some means is designed to provide these services in conjunction with Indian controlled schools, Killer feels that there will be a continual failure in the programs that are put into effect.

Eugene Leitka reviews for us the variety of financial aids available to Indian students from Federal sources. He reviews the beginning of the Federal higher educational efforts by decades and points out that what we see today is a massive flowering of the whole aspect of higher education which may not end for some time. He predicts that within a short time the demands for higher educational assistance grants will be so incredible as to dwarf the already considerable efforts in the field now being undertaken by the Federal government. Whether the development of community colleges will ease this crushing burden within the next several years remains to be seen because as the demands for the assistance change the student bodies also change bringing additional problems to the fore.

We can only speculate at what point there will have to be a complete revision of the manner in which we determine the rights to education of American Indians in a legal sense. At that point we will probably be plagued by the fact that for many tribes educational services are as much a part of their treaty as were the cessions of land and promises of peace. Future Federal and state courts may be forced to reopen the archives of the past to determine on what basis the Federal government is or is not supporting Indian controlled schools. The final article deals with the hidden and potentially important phrases and articles of treaties and agreements as they might be catalogued in various court actions anticipating the full development of theories of treaty rights.

Inherent in this scheme is the recognition that with the emphasis on Indian controlled schools becoming increasingly heavy and the corresponding development of theories of tribal sovereignty making tribal governments an important part of the American political system, educational developments in both programs and funding must find a legal base in the traditional relationship between Indians and the Federal government. At some point, the events and policies of the past must be reconciled with the conditions and legal status of Indians today and determination of Indian treaty rights may be one of the best ways of accomplishing this task.

There are, of course, many other technical problems confronting education of Indians today. Accreditation is certainly a vital and pressing problem and development of professional career structures for employment of people in Indian education is important. However, the ultimate solution of Indian educational problems lies in the independent financial structure supporting Indian schools. David Alexander reviews with us the problems faced today by school districts in their effort to keep their own educational institutions in operation. Since a great many states are already considering the removal of property taxation from their sources of support the old agrument that Indians do not pay property tax and hence do not deserve state educational financial support may vanish. If, for example, states go to sales and income taxes or other sources of revenue to support schools, there may come a time when we do not need to argue that only by taxing the Indian lands can states be assured of Indian participation in the financial problems of state citizenship.

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STATE RESPONSIBILITIES FOR AMERICAN INDIANS - MINNESOTA

by

George V. Goodwin

and

Skip Finn

Minnesota Chippewa Tribe

Cass Lake, Minnesota

Preface

This paper was prepared in an attempt to clarify some of the issues involved in Federal-Indian-state relationships. It is not intended to be a definitive statement but rather to provide a basis for further discussion of this topic. In that framework, this paper provides a great deal of factual and philosophical information about state-Indian relationships in Minnesota.

There is a great deal of information not covered by this paper. The omitted material includes the struggle by Minnesota Indian tribes to contract for Johnson O'Malley services and the negotiations and agreement between the Leech Lake Band and the State on hunting-fishing rights. Both items are of great importance to the subject topic but were too lengthy to be included here. They were considered, however, in the attempt to define the state-Indian-Federal relationship.

Finally, it must be emphasized that the case of Minnesota Indians is unique, though it offers insights into general state-Federal responsibilities. Minnesota is a P.L. 280 State but the Red Lake Reservation is not included. The Sioux tribes live on very small parcels of land bought for them years after they were kicked out of Minnesota. And we have one reservation currently attempting to undo what P.L. 280 did. In addition, almost half the state's Indian population lives in the urban centers of the state.

Minnesota seemingly has a program for its Indian citizens but it has been developed more or less on a piecemeal basis. The

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legislature is pliable and will respond if Indians generate enough enthusiasm for something. By and large, however, little thought has been given to the future.

Overview

"Although the Indian is well known in Minnesota through folklore and place names, and although most people when asked express some curiosity, some interest, and real sympathy for the group, there exists considerable misinformation and misunderstanding about the Indian in Minnesota. Many intelligent and well-informed persons still picture the Indian in a teepee, while others believe he is the recipient of an allowance paid by the Federal government. Few realize that the Indian is a citizen both of the nation and of the state and that as such he is entitled to share in all the benefits and privileges of that citizenship."

So began a report by the Governor's Interracial Commission of Minnesota entitled The Indian in Minnesota dated 1952. This statement is as true in 1974 as it was over twenty years ago. And that is the essential nature of the relationship between Minnesota's largest minority group and the general public -- unchanging. A review of the historical circumstances of White settlement in Minnesota will demonstrate that the Indian situation here has been dominated by Indian -- Federal relationships as in other places. The general public and the state government have usually been interested spectators feeling pity, sorrow, and shame -- but always anxious to be relieved of the burden of retribution for the resources the Indian population was compelled to provide for Minnesota's 'civilization'.

As the historical and the contemporary circumstances indicate, 'manifest destiny' is the key to Indian - state and Indian - White relationships in Minnesota.

With the Louisiana Purchase in 1803, the United States held legal title to almost all of the land now included within the boundaries of the State of Minnesota. The title, though, was subject to the right of occupancy owned by two Indian nations. The Sioux held possession of the Mississippi Valley south of the Sioux-Chippewa boundary to the Arkansas River and west to the Rockies. The Chippewa occupied the northern part of Minnesota from the shores of Lake Superior to Leech Lake and Red Lake.

The Chippewa were originally located along the St. Lawrence River and as far east as the present New England States. They were pushed westward by the Iroquois around 1650. The French traders later provided the Chippewa with firearms which fueled an open but sporadic conflict with the Sioux. Heavier fighting began around 1750 as the westward movement of White settlers and traders pushed the Chippewa further west and south. The warfare between the Sioux and Chippewa culminated in the Treaty of Prarie du Chein in 1825.

Indian - White relationships from 1803 to 1858, when Minnesota became a state, are marked by treaties between the two major Indian groups and the United States. The treaties opened the territory to White occupancy and made possible the development of the timber and mining industries, agriculture, and commerce.

The first of a long series of treaties with the Sioux was negotiated in 1805, two years after the Louisiana Purchase and the U.S. assumption of responsibility for the area. The Sioux assented to the cession of over 100,000 acres of land for presents valued at two hundred dollars, sixty gallons of liquor, and a future payment to be decided by the United States. Subsequently, the U.S. Senate completed the treaty provision by authorizing payment to the Sioux of $2000 in cash or merchandise.

While the first treaty entered into by the United States with the Chippewa was signed in 1785, the first treaty of particular importance to Minnesota was negotiated in 1826 at Fond du Lac. The Chippewa ceded "the right to search for, and carry away, any metals or minerals from any part of their country."

"The inevitable movement of settlers westward" created great pressures upon the United States to negotiate further treaties with the Chippewa and Sioux. Treaties with both the Chippewa and the Sioux were negotiated in 1837 and ratified by the United States Senate in 1838 and these treaties opened the area between the Mississippi and St. Croix Rivers to White settlement. In exchange for the land, the Indians were granted annuities in money, goods, and provisions; allowances for friends and relatives of the chiefs; payments for debts due to traders; and small grants for physicians, farmers, and blacksmiths. The money annuities to the Chippewa were to be for twenty years; those to the Sioux were to be perpetual. The Chippewa reserved the right to hunt, fish, and gather wild rice while the Sioux made no reservations.

The organization of Minnesota as a territory in 1848 and the continued expansion of White settlement created increased demands for the alienation of Indian lands. This lead to four important treaties providing for vast transfers of land during the 1850s:

1851 - Treaty of Traverse dex Sioux -	Cession of Sioux lands in Iowa and Minnesota west of Mississippi.
1851 - Treaty of Mendota	Almost 24 million acres involved. Some land reserved to the Sioux. Opened southern Minnesota to settlement.
1854 - at La Pointe, Wisconsin. Lake Superior and Mississippi Bands of Chippewa	Cession of land and initiation of allotments for Chippewa. Chippewa received annuities and presents. Some land reservations made.
1855 - Cheppewa	Cession of lands. Annuities of money and goods. Also gave President authority to make allotments which would be held in trust. Included land reservations by Chippewa.

When Minnesota became a State in 1858, the demands for further sessions of Indian land increased. Consequently, the Federal government negotiated additional cessions of land with both the Chippewa and Sioux. The demands also led to the provision for removal of the remaining Sioux tribes to South Dakota. The encroachment of White settlers on land reserved for Indians and two years delay in paying for the ceded lands led to the Sioux outbreak in 1862. In 1863 Congress abrogated all treaties with the Sioux of Minnesota and left them homeless and except for a few "friendlies" the Sioux were exiled from Minnesota. In later years, some returned to Minnesota and are now found on small tracts of land purchased for them by the Federal government to relieve their distress.

In all, there are nine treaties between the various bands of Chippewas and the United States, five between the Sioux and the United States, and one between the Sioux and the Chippewa. All of the treaties with the United States describe the land ceded, and with the exception of three Sioux treaties, set out the consideration for which the Indians ceded the land. In the background of each treaty were two forces -- the need for land for White settlement and the need by Indians for cash to settle their debts with fur traders. In many cases trusted traders pressed the chiefs, who could not readily comprehend the meanings of the documents, to sign the treaties to obtain cash which would purchase the goods the traders had provided.

It must be noted, however, that there is Indian land in Minnesota untouched by treaty cession. The Red Lake Reservation, the largest reservation in Minnesota, is unique in that it is not land ceded to the United States and then set aside for a reservation. It remains land held communally under aboriginal title.

It should also be noted that certain treaty provisions made with the Chippewa give rise to "vested property rights." For example, several Chippewa treaties provided that Indians reserved the right to hunt, fish, and gather wild rice or provided exemption of land from real estate taxes. These are vested property rights protected by the Fifth Amendment of the United States Constitution. These rights cannot be taken except for a public use and for just compensation. Consequently, there is some limit to Congress' ability to abrogate Chippewa treaties as it did the Sioux treaties.

Further alienation of Indian land holdings in Minnesota was wrought by the General Allotment Act of 1887 (24 Stat. 388). Though the allotment concept was included in several early treaties with the Chippewa and the Sioux, it did not get under way in Minnesota until after the 1887 legislation and the Nelson Act of 1889 (25 Stat. 62). The Nelson Act provided for the "relief and civilization of the Chippewa Indians of the State of Minnesota..." by authorizing negotiations with the bands of Chippewa for the cession of their remaining lands except for those known as the White Earth and Red Lake Reservations and for as much of these two as was not needed to provide allotments. The Red Lake band was to be allotted on Red Lake; all others were to be allotted on White Earth.

The Leech Lake, Neet Lake, Vermillion, Grand Portage, and Fond du Lac Reservations were saved from extinction by a clause of the Nelson Act which allowed any Indian to take his allotment on the reservation where he was living at the time of removal. The effects of these two pieces of legislation were devastating to the Minnesota Chippewa, as allotment was elsewhere in the country. As of 1969, trust acreage in Minnesota has dwindled to about 52,000 acres as compared to an original trust holding of nearly 900,000 acres. Within the boundaries of the affected reservations, fee-patented and state and Federal land holdings abound. On three reservations, these holdings exceed Indian owned trust land: Leech Lake is 95% non-Indian owned; White Earth 92%; and Nett Lake 59%.

The effects of the allotment legislation on the relationships between the state and the Indian tribes and Indian individuals has never been fully explored. While the legislation clearly reflects a Federal responsibility for Indian affairs, the state was, as in the major treaties, the prime mover of efforts to open Indian land to White settlement. Furthermore, allotment and resultant sales created numerous jurisdictional problems within reservation boundaries. By virtue of the fee patent, some reservation land was subject to taxation and other state laws. Some land also passed into state ownership by tax forfeiture; other land was purchased or granted to the state forestry. Still more reservation land is owned by the Federal government. Undoubtedly, the allotment legislation did a great deal to initiate and shape state-Indian relationships.

The next major Congressional action to affect Minnesota Indians was the Act of June 2, 1924 (48 Stat. 253). Under this law, all Indians born within the territorial limits of the United States became citizens of the United States. The law thereby clarified the status of the Indians who had not previously attained citizenship through marriage to White men, military service, allotment, or special treaties and statutes. As citizens of the State of Minnesota, Indians gained the right to vote, the right to hold office, the protections of due process in the state courts, etc. There remained some confusion about the status of Indian citizens, primarily because they retained certain Federal protections and services. It was not until 1947 that the Minnesota legislature removed the state prohibitions on the sale or use of liquor by Indians. It would be safe to say that Indians, despite full citizenship of the state and nation, were treated as a special class of citizens by the state even up to 1947. And as will be pointed out later, Indian citizens still maintain a special status within the state.

In addition to state and Federal citizenship, Minnesota Indians have their own tribal governments. While they did not accept the Indian Reorganization Act of 1934, the Red Lake Band of Chippewas was the first Indian tribe in Minnesota to organize under a written constitution in 1918. The governing body was the General Council. It consisted of the traditional chiefs and members appointed by them. No members were elected, but the constitution stated that the Council should give respect and proper consideration to petitions from any member. The constitution was revised in 1958 and lead to the first secret ballot election held on that reservation in 1959.

The other Chippewa bands organized together as The Minnesota Chippewa Tribe under the Indian Reorganization Act of 1934. The Lower Sioux Community and the Prairie Island Sioux Community also organized under this act. All three groups adopted constitutions and by-laws and were granted corporate charters from the Federal government. The Chippewa reservations comprising the Minnesota Chippewa Tribe each have a five member Reservation Business Committee (RBC). The RBC's exercise a degree of home rule but are subject to the powers and responsibilities of the Tribal Executive Committee (TEC). The TEC is composed of twelve members: the chairman and the secretary-treasurer of each of the six reservations.

The tribal governing bodies are the legitimate representatives of the Indian tribes in dealings with the state government. In some instances they have overlapping jurisdicitions and responsibilities with the state (such as providing for the welfare of tribal members); in others the responsibility is distinctly separate (such as protection of tribal assets and providng free public education); in yet other areas they are both preempted by the Federal government (such as the major crimes committed on the Red Lake Reservation).

Another piece of Federal legislation affecting the status of Indians in Minnesota was the Act of August 15, 1953 (67 Stat.586). Also known as Public Law 280, this law assigned to five states, including Minnesota, jurisdiction over law and order on Indian reservations. A clause of the law provided, however, that "nothing in this section shall authorize...the taxation of any real or personal property... or deprive any Indian... of any right under Federal treaty with respect to hunting, or fishing... or the licensing or regulation thereof." Because of this act, all Minnesota Indians, except Red Lake residents, are subject to the state legal system.

Public 280 was a result of the termination philosophy of Congress. It was intended to clarify the legal status of Indians and to turn the responsibility for law and order over to the state. However, local units of government in Minnesota are still hesitant to extend police services to reservation residents primarily because the police and sheriff are financed by local taxes. The reasoning is that Indians should only get minimal services since their lands are not taxable. Generally, it appears that Indians are only considered as defendants in both civil and criminal cases. Local governing bodies consider law enforcement in reservation areas as an unwanted burden resulting from a Federal shirking of responsibility.

From 1953 to today, Indian and non-Indian relationships continued to be dominated by Federal programs and legislation. After a period of relative inactivity, Minnesota Indians began to stir with the proliferation of the Great Society Programs in the early Sixties: OEO and CAP, Headstart and New Careers, Mainstream and NCY, EDA and HUD. Through these programs the responsibility of the Federal government for financing and assisting in the development of Minnesota's Indian communities was continually asserted. Simultaneously there was an increase in BIA funding for the various services it provided to Minnesota's Indian population. And through it all, state and local officials were glad to see the Federal government reassuming the burden of Indian affairs.

Historical Responsibility

Until their submission to Federal authority, Indian tribes were absolutely sovereign entities. This status meant that they were fully responsible for the public welfare, the education, and the defense of the tribal members. Law and order was also a "native and indigenous function of tribes."

Military conquest of the tribes by the United States brought to an end the external aspects of sovereignty, but the right to self-government was retained as an inherent right. The treaties signed between the United States and the tribes recognized this. As tribes were received into the "protection" of the Federal government, they retained full sovereignty on the land reserved to them. They exercised their full governmental function, including the administration of both civil and criminal justice with respect to tribal members.

As the system of laws governing Indians and defining the jurisdiction over Indian conduct changed through treaties and legislation, the legal status of Indians changed. In general Indians were losing some of their inherent rights of sovereignty without gaining corresponding rights under the government which was assuming authority to govern their lives.

One of the major concepts used to erode tribal sovereignty was that the Indian was a "ward" of the Federal government. The effect of treaties and agreements with the Federal government was to place Indian tribes in the "protection of the United States." Justice Marshall in Cherokee Nation vs. Georgia, 1831 commented that the relationship between Indians and the Federal government resembled that of a ward, implying Federal guardianship. The creation of the Bureau of Indian Affairs in 1824 further promoted the concept of the Indian as a "ward." Acting as trustee of Indian lands and money, the BIA supervised many aspects of the life of Indians.

The "ward status" concept had a great deal to do with shaping state-Indian relationships because the state government and the general public believed that Indians, as wards of the Federal government, should receive protection and services from the Federal government and not the state or local units of government. When the Act of 1924 granted all native-born Indians citizenship, they became citizens of the state in which their reservation was located. However, citizenship did not make Indians subject to state law or eligible for state services. It did not take away tribal membership with its attendant rights of communal ownership of land, tax exemption, and eligibility for BIA services.

Welfare Services

Ever since the initial treaties, the Federal government has been the major supplier of welfare services to Indians. Up until the 1920s, Indians were primarily confined to reservations and were the sole concern of the Federal government. Most early welfare services were financed by tribal funds channeled through the Bureau of Indian Affairs. For instance, a 1901 report indicated that only $7,000 of $205,000 recorded for Chippewa relief in Minnesota were gratuity funds, the remainder were tribal funds.

During the 1920s, there was change in the role of the Federal government. Indians had become citizens, and rationing was stopped entirely in 1929. During the depression the Federal government assumed a greater share of the burden for welfare services to all citizens and Indians were included in the general programs designed for everybody.

There was and continues to be a resistance on the part of local and state governmental units to accept Indians as state citizens entitled to the same protections and services provided to the general population. This attitude has created a number of special problems for Indians which have been heightened due to rising welfare costs and the settlement of large numbers of Indians in the Twin Cities area.

There are a number of peculiar jurisdictional problems between the various levels of government. Minnesota Law (Sec. 261.03 and 261.10) states that the responsibility for meeting welfare needs resides with the county or township of residence. And since Indians are citizens of the state, whether they live on or off a reservation, state services should be made equally available to them. It is Federal policy, however, to provide services on reservations where they are not available from other sources. It is not compulsive for the Federal government to provide aid, however, since appropriations rest solely with Congress.

The reduction in Federal welfare services to Minnesota Indians in recent years can be seen as an attempt to force the state and local units of government to fulfill their legal responsibilities to Indian citizens. But without Federal financing, this shifting of responsibilities has been strongly resisted by all units of state government. Consequently, the state today does provide Indians with welfare services which are partially financed by Federal funds. State aid mainly involves the categorical aids such as AFDC and medical assistance. Counties grudgingly provide general relief, which is entirely financed by local taxes, to Indian residents with one exception. The exception is Beltrami County and involves Red Lake, where the BIA still provides general relief services. The Bureau of Indian Affairs finances other state-county services such as Indian foster care by way of a contract with the State Department of Public Welfare which provides reimbursement to county units of government on a dollar for dollar basis.

It is quite clear that it is the responsibility of the state and local units of government to meet welfare needs of Minnesota Indians. It is also quite clear that this responsibility is not wanted and will be met only so long as Federal financial assistance is forthcoming. Those counties which provide general relief to Indians openly state that they do so only in order not to jeopardize Federal bankrolling of general welfare services.

Recent events indicate that the official state view remains the same as it was in 1958 when the Commissioner of Public Welfare said, "The state is willing to accept the responsibility of providing welfare services to Indians with Federal financial support." This view is illustrated by a 1973 DPW agreement to hire an Indian advocate at the state level where the costs will be split 75% BIA and 25% state. The state plans to get its 25% share from another Federal program.

Education

The types of educational services available to Minnesota Indians have generally followed the national pattern. First there were mission schools with a strong religious and academic content followed by manual labor schools offering religious, academic, and practical instruction. Then came the boarding schools dedicated to eradicating Indian culture. After 1912, boarding schools were replaced by Federal Indian day schools, though some youngsters still attend Federal boarding schools located in the Dakotas and Oklahoma.

As with welfare services, Indian residents supposedly became eligible for state educational services when they became citizens in 1924. Despite a constitutional mandate to provide all state citizens with free public instruction, Indians were not made welcome in public schools and Indian public school attendance lagged until 1935 when the state entered into a contract with the Bureau of Indian Affairs under the authority of the 1934 Johnson O'Malley Act. The JOM funds helped defray the cost of attendance in public schools by children at least one-fourth degree Indian and residing on trust land.

Prior to the Johnson O'Malley authority, the Bureau of Indian Affairs had entered into special agreements with individual school districts which provided for payment of a fixed amount for tuition in return for which the district provided instruction, noon-meals, and transportation where necessary. We find comment on this arrangement and the eventual burden of Indian education by the State Indian Affairs Commission of 1926-27:

> Until recently all responsibility for the education of Indians has been assumed by the Bureau of Indian Affairs. There are approximately 4,000 Indian children of school age in Minnesota. Of this number 2,500 are attending public schools of the state... In the communities where the number of Indian children is large, the Federal government is giving financial aid... to the public school. This plan is one of the best methods of approach to the solution of the problem of the state having ultimately to take over the education work among Indians... The whole question is one of cooperation between the state and the Federal government, and since all the Indians are now citizens, the consequences to the state are clear and unmistakable... Our Commission recommends the gradual assumption by the State Department of Education of this responsibility.

With the 1936 JOM contract, an Indian Division, within the Rural Division, of the State Department of Education was created. The purpose of the new division was to supervise the administration of the JOM contract. It had no other function. In so doing, the Indian Division relieved the BIA staff of the burden of negotiating individually with each school district enrolling Indian children.

Under the Johnson O'Malley authority the State of Minnesota has been paid $10,986,860 spread over the years as follows:

Fiscal Year	Contract Amount	No. Students
1937	$ 82,900	N.A.
1938	100,000	N.A.
1939	100,000	N.A.
1940	100,000	N.A.
1941	100,000	N.A.
1942	100,000	N.A.
1943	140,000	N.A.
1944	140,000	N.A.
1945	140,000	2,128
1946	140,000	2,232
1947	140,000	2,233
1948	167,150	2,330
1949	226,910	2,513
1950	288,000	2,460
1951	310,000	2,471
1952	310,000	2,600
1953	325,600	2,602
1954	300,000	2,610
1955	300,000	2,727

Fiscal Year	Contract Amount	No. Students
1956	$ 300,200	2,762
1957	300,200	2,603
1958	310,200	2,603
1959	105,000	2,710
1960	176,000	2,341
1961	132,500	2,446
1962	146,218	2,425
1963	198,592	2,402
1964	200,000	2,615
1965	212,000	2,500
1966	230,000	2,438
1967	263,325	2,487
1968	283,000	2,577
1969	369,165	2,634
1970	796,500	2,680
1971	850,000	2,861
1972	1,283,000	3,042
1973	1,321,000	3,115

Undoubtedly the JOM contract did not cover the full costs of educating Indian children in the public schools, but it certainly made the state's "assumption of responsibility" much more palatable.

Over the years the Indian Education Section of the State Department of Education has assumed other duties, but its primary responsibility has always rested with JOM. The Indian Division staff have been involved in the distribution of Public Law 815 and Public Law 874 funds since their inception. In 1969 it began supervision of an Indian Adult Basic Education project funded under Section 309 of the Adult Education Act of 1966, Public Law 89-750. Proving successful, the state funded Adult Basic for 1973-74. In 1970 the Division was directed by the legislature to develop and implement a human relations training program for teachers and administrators of Indian children. A year later the legislature provided $30 per JOM eligible pupil for special educational services. Both pieces of legislation have expired and have not been renewed, leaving the 1973-74 Indian

Adult Basic project and the State Indian Scholarship Program the only direct state funded Indian education programs.

Between 1936 and 1960 the Bureau of Indian Affairs turned all of its day schools over to the state. By and large, these schools were incorporated into adjoining public school districts. A few, such as at Nett Lake and Grand Portage, remained Indian community schools but became eligible for the state aids available to other public school districts. In the mid-Sixties the State Legislature passed a school consolidation law which closed the doors of all Indian elementary schools not already part of a district containing a secondary school.

Through some intensive lobbying by concerned citizens, both Indian and White, the legislature made an exception for the all-Indian school at Nett Lake. Another elementary school at Pine Point managed to survive for a couple of years as a demonstration school within a predominantly White school district. The 1973 legislature, under heavy pressure from the public and the State Department of Education, re-established the Pine Point district on a two year experimental basis. In both cases the state agreed to the exemptions only after it was guaranteed that the schools would be supported primarily by Federal funds and would not necessitate additional state aids.

Three other Indian community elementary schools have remained open because they receive special consideration in the distribution of JOM funds. These schools have been consolidated with non-Indian districts, however. If and when JOM funds are withdrawn, these schools will certainly close. And as the costs of education increase, there is a distinct possibility that these schools may be closed even if JOM support continues. Run by White school boards, it will not be long before the decision is made that the relatively unrestricted PL-874 funds could better be used to offset projected tax increases that would fall on the rest of the district if most of the Indian schools remain in operation.

The Indian Education Section is responsible for administering the State Indian Scholarship Program. This program was the outgrowth of the organization of a Minnesota Indian Scholarship Committee in 1951. The original group was comprised of state department personnel, BIA employees, representatives of the Minnesota Federation of Women's Clubs and other concerned lay people. Its purpose was to solicit and award funds from all sources for the post-secondary training of Indian students. Through its lobbying efforts, the State Legislature established the State Indian Scholarship Program in 1955. It has been funded annually ever since at the following levels:

1955-56	$ 5,000
1956-57	7,500
1957-58	7,500
1958-59	10,000
1959-60	7,500
1960-61	7,500
1961-62	12,000
1962-63	15,000
1963-64	20,000
1964-65	20,000
1965-66	24,961
1966-67	25,000
1967-68	35,000
1968-69	40,000
1969-70	60,000
1970-71	75,000
1971-72	110,000
1972-73	150,000
1973-74	240,000

In conjunction with BIA higher education funds and the hiring of a full time guidance counselor (with JOM funds) in 1958, the Scholarship Program has grown from ten students in 1955 to almost a thousand today. Much of the credit for the state funding and continued growth of this program must go the Minnesota Indian Scholarship Committee (MISC) which has effectively lobbied for its continuation each year.

Another citizen's committee which has been instrumental in moving the State Legislature for the other Indian programs outlined above is the Minnesota Indian Education Committee. Originally organized in 1967 as a group of concerned Indian citizens with the purpose of reviewing and offering recommendations for Indian education at all levels, the Minnesota Indian Education Committee has become an advisory board to the Indian Education Section. In order to meet administrative expenses, the committee accepted the offer of the State Department to allow MIEC to serve as the legislatively mandated advisory committee for the Human Relations Project. Ever since, the committee has been rather weak failing lived up to its potential as it got bogged down in implementing the Human Relations Project.

There is absolutely no question that the State of Minnesota is responsible for providing Indians,by virtue of their citizenship and residence in a school district, with the same free public instruction provided to all other citizens. However, as in the case of welfare services, the state and school districts do not feel obligated to provide these services unless they receive Federal dollars as an inducement. Only in recent years have we seen the state spend its own dollars in the area of Indian education, and these have been disproportionately spent on post-secondary education.

It is obvious that the state public education system is moving very slowly in assuming the full burden of providing educational services to Indian children recommended by the State Indian Affairs Commission in 1927. By and large, Federal dollars through JOM and Public Law 874 replace possible tax revenue where there are large amounts of trust land. Since the districts involved also receive state aids as any other district this situation could continue indefinitely if alternatives to 874 and JOM are not provided. In this respect, the state presently is not fulfilling its responsibility.

In the area of education, as in the area of welfare services, there are some special problems confronting Indians. The foremost problem is that of convincing the public schools that education for Indian children must be something more and different than that provided to non-Indian children. Indian communities have unique needs and concerns which can only be answered by the educational system. The Special Senate Subcommittee report of 1969 clearly demonstrated the ill effects visited upon Indian people by forcing the general American educational structure upon Indian children. To overcome these difficulties and to prevent them in the future requires special educational services for Indians. This is especially true for Indian children attending predominantly White schools in Minnesota and the problems are accentuated here because almost fifty percent of the Indian population resides in the urban areas of the state.

It is the responsibility of the state to provide the basic educational services dictated by the state constitutional mandate but it is unrealistic to expect a state to do any more; it cannot do any less.

It then remains the responsibility of the Federal government, morally if not legally, to provide the resources to meet the special and unique educational needs of Indian communities. And as indicated above, these supplementary services cannot be limited to the BIA service area, i.e. the reservation boundaries. To do so would deny the services to half of the state's Indian population, the urban Indian, who needs them as badly as the reservation population.

In the area of education, Federal and state responsibility is unique. Unlike welfare services, the educational services required by Minnesota Indians must remain a shared state and Federal responsibility. As the Indian communities and their tribal governments lack the resources necessary to maintain an adequate level of educational services, the withdrawal of Federal educational assistance would certainly leave a burden which the state could not assume creating a disaster for Minnesota's Indian citizens.

Summary

It is quite apparent that state responsibility for Indians in Minnesota has been largely determined by the Federal government and its policies of dealing with Indians. The Dawes Act, Citizenship Act, Johnson O'Malley, Public Law 280, Public Laws 815 and 874, and the host of Great Society Programs have all had a bearing on state responsibility for Indian affairs.

Initially the State of Minnesota had no responsibility for Indian affairs. Over the years, it gained responsibility for those Indians who became citizens and resided away from the reservations. With the passage of the 1924 Citizenship Act, Congress paved the way for the gradual termination of the unique Federal - Indian relationship. Congress recognized the financial burden placed on states, especially in education, and passed legislation to assist the states in assuming the responsibility which had formerly rested with the Federal government. That at least, is the view of the state and local governing units which provide services to Indians. There is documentation that this view is held for off-reservation Indians as well as those living on trust land.

The acceptance of Public Law 280 in Minnesota served to clarify some jurisdictional problems in the area of law enforcement. It did little, though, to clarify the overall picture of responsibility. On one hand, P.L. 280 recognized that at least in the area of civil and criminal matters there had been and was a special Federal responsibility. On the other hand, the law indicated congressional determination to give Minnesota full responsibility for Indian affairs. To state officials and to Indians, Public Law 280 is interpreted as a reaffirmation of Federal responsibility for Indian affairs. To Federal officials, Public Law 280 was the final step in placing all responsibility, except for Red Lake, in the hands of the state.

In addition to these seemingly contradictory actions, the Bureau of Indian Affairs has continued to provide services to all of Minnesota's Indian reservations. That by itself is an indication of a continued Federal responsibility based on its trustee functions. It therefore seems that nothing short of the termination of all trust lands will abrogate the unique Federal responsibility for reservation Indian affairs in Minnesota and perhaps not even that would prove effective.

As discussed earlier, the "ward" concept of Indians has had a large and lasting effect on the general public. It has, to a great extent, helped to shape the state's conception of its responsibilities in Indian matters. The State Legislature is comprised of average citizens who have no better understanding of Indian affairs than their peers. Consequently, every time a piece of Indian legislation is brought before the legislature the question usually asked is, "Shouldn't the BIA handle this?"

In certain matters the question of responsibility is clearly delineated. An example of this is the area of law enforcement. The question of state responsibility has seemingly been answered but to nobody's satisfaction in the case of welfare services and education. In both areas there is clear state responsibility, but in neither case does the state fulfill its obligations without Federal financial assistance. Many state officers and Federal officials believe that the state is assisting in fulfilling a Federal responsibility, but in reality, the Federal government has been assisting in fulfilling a state responsibility.

Indian people in Minnesota tend to see the fulfillment of their educational needs as a Federal responsibility -- as a duty required by past Federal handling of Indian affairs. Many Indians also see JOM and BIA scholarship funds as examples of treaty obligations being fulfilled which accounts for the great resistance to proposals to transfer BIA education functions to the Department of Health, Education and Welfare. Historically the function of HEW has been to help states meet their obligations. The transfer of BIA services to HEW would divorce these social services from the agency charged with the trust of Indian property and would seem to indicate that the services are not a fulfillment of a unique responsibility to Indian citizens.

Title IV, the only uniquely Indian program in HEW, has generated a great deal of discussion. Many people feel that this program is a duplication of JOM; others feel that it should be limited only to off-reservation Indians. Many see it as a threat to JOM programs. Many people at the state level and on the national level advocate removing JOM eligible schools from participation in Title IV. As written, Title IV guidelines for Part A clearly leave the impression that the program is intended to assist school districts in meeting local responsibility as indicated by the establishment of the local advisory committees. The process of selection and method of operation is left entirely up to the district and nothing can be done without school sanction. But there is no mechanism to allow local participation if the school district refuses to apply for funding. Since there is no way to force the district to apply for funds, there is no doubt that Title IV is Federal assistance to school districts and not Federal assistance to Indians. The treaty issue is thus confused by the nature of the law.

The question remains: What is the responsibility of the Federal government to Indians? What should it be? The same questions arise for the state government. There are probably as many answers as there are respondents. There is undoubtedly a special Federal responsibility to Indians in Minnesota which has never been abrogated. There are questions about extending Federal Indian services to off-reservation residents but special problems arise because many people see the Federal responsibility to Indians only in relation to the trust status of Indian lands. Over the years this view has been adopted by the BIA -- hence a restriction of BIA services to reservation residents. This had tended to lend lustre to the "ward" concept.

On the other hand, the state and its units of local government have never recognized any special responsibility to Indians. These units of government even hedge in assuming responsibility for basic services due all citizens.

Most Indians see a special Federal - Indian relationship which involves Federal responsibility for the redevelopment of Indian communities and governments. This responsibility is not seen as dependent upon tax-exempt residence. Rather, Indians view the responsibility as extending to them as members of an Indian tribe, regardless of residence. Considering the history of Indian affairs, it would appear that there is both a legal and moral basis for insisting upon this relationship. Although the states were the prime movers in the efforts to obtain Indian resources, it was the Federal government which entered into treaties and agreements thus incurring a responsibility to provide all necessary services to Indians.

It would be too much to expect that the State of Minnesota, at this date, could recognize and fulfill a unique responsibility to its Indian citizens. The state has neither the resources nor the stability required to assist in the development of Indian communities. By its very nature the process of development requires many years and even then may not reach self-sufficiency. Consequently, Indians in Minnesota demand a continuation of the long term commitment and capabilities of the Federal government.

Total responsibility for Indian affairs is a three party arrangement: Indian people, state government, and Federal government. The long-term trend of Indian affairs will require sacrifices by all three as well as a continuing spirit of cooperation. Indian people should reasonably expect and should demand no more than what is necessary for their preservation and the attainment of their ideals. The state government and its local units of government must provide the services to Indian citizens mandated by the state constitution. And the Federal government must continue to recognize its unique responsibilities to Indian people and their governing bodies and provide the necessary resources for Indian survival until such time as Indians request their discontinuation. It is a road of partnership with incumbent duties and responsibilities on the part of all three. If one shall fail, none shall gain.

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STATE RESPONSIBILITIES FOR AMERICAN INDIANS - TEXAS

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Defining State Responsibility

In determining state responsibility for funding state reservations and their Indian programs it is necessary to consider the problem from two aspects. An obvious but unfruitful approach is through our existing system of American Anglo jurisprudence. The other approach is basically political and while it has been employed to great advantage in individual circumstances, the political approach will depend entirely upon the attitudes and political climate prevailing in individual states. In general the political approach should show promise in states where Indian populations are small and should be difficult to employ in those states with large concentrations of Indian citizens.

It is a paradox that the only reason Indian people seek to establish their rights with any governmental entity stems from the fact that they cling with determination to a culture which is different from the dominent Anglo-American culture. And yet to determine what rights Indian groups or citizens might have in our dominant society it is

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necessary to apply the rules of a system of law that had its genesis in the eastern Mediterranean area and was brought to fruition in Medieval England. Unfortunately Indian concepts and attitudes have no impact on our system of jurisprudence. Thus while the Indian marches to a different drum beat and clings to his cultural heritage he must keep in step with the white man's law in seeking to get a state or the Federal government to respect his rights.

Under our concept of law all aboriginal rights stem from the prior exercise of sovereignty by aboriginal groups over the lands they formerly occupied. Their use, occupation, and dominion of land areas has been universally recognized as continuing on until the conquering sovereign or its successor terminates the right of possession or ownership. Termination in a legal sense can occur through military action, treaty, or legislative or executive fiat. A fundamental corollary of the right of the sovereign itself has this power and it cannot be accomplished through the actions of private citizens, corporations or even state governments. While it is too late to assist many small impoverished Indian groups in the United States to receive recourse in the Indian Claims Commission because of the statute of limitations, it is possible that there are many existing Indian titles in the United States that are still valid though unrecognized and not presently being asserted.

A perfect example of this situation existed with respect to the Tigua Indians of Ysleta, Texas some years ago. This small band had miraculously survived as a distinct and viable cultural group within the confines of a modern city. They had never been given any substantial government assistance and would probably have continued to exist with the Indian culture and attitudes totally masked by the large

Mexican population of El Paso, Texas, were it not that ten years ago every Indian home in the Ysleta area was in some form of tax foreclosure. With one exception these were homes without water, electricity or any other of the modern conveniences. In an attempt to assist these people many interested persons including both Indians and Anglos collectively sought to stop the foreclosure suits and provide the Tiguas with an opportunity to maintain their tribal status.

The story of the Tiguas provides a perfect example of the very complex situation faced by many Indian communities today. It also gives us some indication of the problems involved in defining the stature of the Federal responsibility for Indians and any subsequent derivation of state responsibilities from the initial fact of Federal recognition of the "Indian" nature of an Indian community.

The Tiguas today enjoy a prosperity which would be the envy of many Indian tribes with long records of Federal assistance. Their prosperity in part derives from a fortunate discovery that in 1692 a grant of land was made to this tribe by Governor De Vargas prior to his reentry and reconquest of New Mexico. For twelve years the Tiguas had served as an outpost and buffer community protecting the Spanish from the aftermath of the Pueblo Revolt of 1680. The Tigua grant is thus perhaps the oldest private land survey in the United States of American since even the New Mexican Pueblo grants were not established until the reconquest of New Mexico was complete. Once the Tiguas were armed with the knowledge that their grant had never been terminated by the action of any of the sovereigns that had exercised control over them, local taxing authorities, state officials and Federal officials all worked to assist the tribe rather then have them assert their grant to some thirty-six square miles of present day downtown El Paso.

The lesson that we can derive from the Tigua experience is that only when an Indian community has a very strong legal position and is prepared to exert this position on its own behalf in opposition to local, state and Federal authorities causing discomfort and dislocation to the larger authorities, only then do these larger entities respond to Indian needs. One cannot, therefore, expect a spontaneous action on the part of state governments to fill the needs of Indians who are not receiving services from the Federal government. At least one cannot expect such action unless one has a powerful legal weapon in reserve.

While in the case of the Tiguas, a *legal* title to a land grant under the King of Spain was asserted to aid in arriving in a political solution to Tigua survival, an *aboriginal* title assertion might have been just as successful and useful. It is at once obvious that every Indian group in the United States has a basis for asserting an oboriginal title or has at one time had such a title which may have been lost through Federal action. The ability of an Indian group to assert a title interest can be a valuable tool in seeking a political solution.

Conversely, the fact that Indian rights basically flow from their prior exercise of sovereignty, has improperly been used an an excuse for denying Indian claims and rights. The policy of the Federal government through the BIA has consistently been that it has no obligation towards Indian citizens unless it is currently administering trust lands for the benefit of the Indian group. While the BIA uses this excuse to avoid responsibility for many Indian groups there is ample historical evidence of their assisting Indian tribes without concurrently holding a trust title for their benefit.

Since every square inch of our country had to have been in aboriginal ownership prior to European conquest, it would only seem logical and just that there should be Federal responsibility to all Indians by virtue of termination of Indian title even though land were no longer held in trust. The framers of the Constitution contemplated this in that Section 8 of Article 1 reserves to the United States of America the exclusive right to regulate commerce with the Indian tribes. The Supreme Court of the United States in the celebrated case of Worchester vs. Georgia made it clear that the Federal responsibility was exclusive and prohibited state interference or control of Indian groups without prior Federal approval.

Because of this clear reservation by the United States of the right to deal and treat with its Indian citizens, the former Attorney General of Texas, Crawford Martin, required that Federal legislation be obtained recognizing the right of the State of Texas to assist the Tigua Indians and extend them benefits even though the State had passed and the Governor had signed a bill recognizing the tribe and assuming State responsibility for them. While it would appear that such Federal legislation would be simple to obtain, it was perhaps the most difficult aspect of solving the Tigua problem and obtaining benefits for them. The BIA threw every road block possible in the path of such legislation claiming it was unnecessary and resisting the entire concept until the bitter end.

At the Congressional hearing on the Tigua recognition bill which merely recognized the tribe as a surviving Indian group and transferred trust responsibility if any, to the State of Texas, Chairman Aspinall of the House Interior and Insular Affairs Committee chided the BIA representative, James Officer, for once again adhearing to BIA policy of being concerned with property and not people. While it seems obvious that Federal approval would be required before state governments could become involved with Indian groups, the opposite situation does prevail. In fact, the State of Maine, without any apparent legal justification, has steadfastly maintained that it has sole responsibility for its Indian citizens and operates a program of benefits for Indians without apparent legal authority. The BIA down through the years has insisted that the thirteen original colonies all have the responsibility for their Indian citizens because the thirteen original colonies retained their public land. Once again we have the spectre of the land base being involved with Indian rights.

A political solution to the extension of state benefits to Indian groups would be difficult in states with large Indian populations and a very attractive course to pursue in states with small Indian groups. This situation stems from the fact that states with large Indian populations generally have non-Indians citizens who resent the tax exempt status of Indian lands. The dominant Anglo society often feels that Indian citizens are not contributing to the expense of running the affairs of government. In states like Arizona and New Mexico, this resentment in the Anglo community is deep seated and it would be surprising indeed for these states and others like them to voluntarily assume any responsibility for Indian groups absent some strong motivation such as Federal funding. On the other hand, the situation in Texas was ideal from a political point of view with respect to establishing state responsibility for the Tigua group. Texas is a wealthy state and there was only one other Indian tribe within its boundaries, the Alabama-Coushatta in east Texas.

While at one time Texas contained many indigenous aboriginal groups and other immigrant tribes fleeing from the ever expanding land-hungry Anglo settlers on the eastern seaboard, all of these groups, with the exception of the Tigua and the Alabama-Coushattas, were pushed out of the limits of the state by the Texas settlers, their militia and Federal troops. With such a scant population of Indians living in the state, it was not difficult to go to the Texas legislature and remind them of their moral responsibility even though there was no legal basis for forcing state action. It would be naive not to recognize that the Texas legislature saw a benefit accuring to the state through tourist promotion. Regardless of the baseness of this motivation, it should not be overlooked in dealing with state governments in seeking their assumption of responsibility for Indian groups.

Transfer of Responsibility From Federal to State Governments

In recent years there has been an increase in the assumption by states and other governmental units of functions previously the sole responsibility of the Federal government. This increased state involvement has been primarily in the fields of education, social services, agriculture extension services, soil and moisture conservation, health and law and order. It is impossible to make any generalized statement with respect to increased state involvement as it varies from assumption of minor functions to total transfer to all Federal functions as in the case of the Alabama-Coushatta tribe of Texas. In each case, the Federal government through specific legal enactment has made the transfer of jurisdiction with the consent of the state and often times the contrived approval of the Indian group concerned. The willingness of states to assume some of the Federal responsibility cannot be attributed to the good will of the states involved, but stems from the desire of the states to exercise more control over Indian citizens and remove the protective barrier of the Federal government.

There can be no doubt that the motivation results from the desires in many states with large Indian populations to place Indian land base in the same status as other private lands with respect to taxing authority. This piecemeal transfer of responsibility from the Federal government to the states followed an earlier period of effort by the Federal government to terminate all Indian tribes as fast as possible and eliminate their eligibility for any services or treatment above and beyond that provided to citizens at large.

The Federal desire to terminate Indians can be noted in some of the early treaties that contain lauditory language praising the desire of specific tribes to work for early citizenship and termination of government responsibility. Termination became the battle cry of Federal Indian administrators and legislators who saw no middle ground between complete seclusion of Indian groups and total absorption by the White community. Of course these early Indian policy makers had no regard for Indian culture and saw no value in its preservation.

The Federal termination effort peaked between 1954 and 1958 when ten termination acts were passed affecting the Alabama-Coushatta tribe of Texas, the California Rancherias, the Klamath tribe of Oregon, the Menominee tribe of Wisconsin, the Ottawa tribe of Oklahoma, the Paiute tribes of Utah, the Peoria tribe of Oklahoma, and finally the mixed bloods of the Uintah and Ouray Ute tribes of Utah, sixty bands in western Oregon and the Wyandotte tribe of Oklahoma. In 1959 termination legislation was passed for the Catawaba of South Carolina and in 1962 for the Ponca tribe of Nebraska.

During the 1960's a violent Indian reaction occurred to the termination program and many Indian groups realized that they had been sold a bill of goods by Federal administrators encouraging them to accept the so called Benefits of Citizenship. Even the Governor's Interstate Indian Council which had favored termination from its very beginning began to realize that with termination the states in obtaining political control over Indian citizens were also assuming large financial burdens without commensurate Federal contributions. Coincidently at this same time, the national conscious began to see for the first time what had really been done to America's aboriginal citizens. While in part this change of attitude is patronizing, it has nevertheless made the Indian voice all the more audible in the halls of Congress.

To detail all the specific transfers of Federal responsibility to state governments and analyze their effect in determining state responsibility for funding state reservations and other Indian programs would be beyond scope of this paper. Those interested in pursuing these details should carefully read "The States and Their Indian Citizens" by Theodore W. Taylor. While this work is an official publication of the United States Department of the Interior's Bureau of Indian Affairs published in 1972, it is an excellent compliation and analysis of the various individual transfers of Federal functions to state governments. Mr. Taylor has done an excellent job and the appendix material should be of vital assistance to anyone working with Indian groups interested in defining state responsibility. But Mr. Taylor does not touch upon the problems of that most unfortunate of all Indian groups, those that have never been recognized by the Federal government. The book concerns itself solely with the responsibility of states for Indians where there has been an actual transfer of function from the Federal government to a particular state. The balance of this paper will deal with those Indians scattered throughout the United States, usually in small bands, who may not have signed a treaty with the United States of of America, who never were placed upon a reservation and those groups who at some time in their history received Federal assistance and then were slowly phased out of existance by the quiet retreat and withdrawal of the Federal government from their trust responsibility.

No doubt the administrators responsible for these tragic actions by the Federal government thought that the results of their efforts would be the absorption of these Indian groups into the general society and their extinction as viable and identifiable groups. How wrong they were. The flickering fires did not go out. The determination of these small and isolated bands to cling to the traditions and values of their ancestors has been preserved in spite of every obstacle.

In order to examine the plight of the nonrecognized tribes, attention will be focused on three Indian groups: the Tigua Indians of El Paso, Texas, the Coushatta Indians of Louisiana and the Tortugas Indians of Las Cruces, New Mexico. These three groups all have a common background in their relationship with the Federal government and their historic abandonment by the Bureau of Indian Affairs. In one case, through assumption of responsibility by the State of Texas, the Tigua Indian group is now well on its way to achieving a position of true independence and security with complete retention of their Indian culture. In the case of the Louisiana Coushatta the beginning processes are taking place and in the case of the Tortugas group of New Mexico no progress whatever has occurred. All three groups, within historical times, have enjoyed a significant and substantial land base. The effective loss of this land base led to their recent circumstances of poverty. In considering their situation and the efforts that have already been made to secure their rights, we may discover how to assist some of the other forgotten Indian groups to achieve recognition by state and Federal governments. To this end our attention will first be focused on the Tiguas of El Paso, Texas.

In 1540 the great Spanish explorer and conquistador Coronado reached the banks of the Rio Grande River somewhere north of the present day city of Albuquerque in the center of the Southern Tigua Pueblo country. At the time of Coronado's arrival, the Spaniards found twelve Tigua villages north of the present day Albuquerque and eight down river, possibly centering around present day Ysleta, New Mexico. Their houses reached four stories in height and the Spaniards were impressed with their industry and bountiful harvest.

After the rape of an Indian woman by one of the Spanish soldiers, the Indians refused to give the Spaniards provisions and barricaded themselves within their Pueblos. Coronado ordered Captain Cardenas to assault and give no quarter. The Spaniards laid seige to one of the prinicipal Tigua Pueblos and after a sustained battle accepted the surrender of the Indians under a sign of peace. Some two hundred captives were taken and were promptly given a taste of European justice by being tied to the stake and burnt to death. Seeing the fate in store, some one hundred broke free that night and attempted to escape. Castaneda, the chronicler of the Coronado expedition observed: "As the country was level not a man of them remained alive unless there was some who remained hidden in the village and escaped that night to spread throughout the country the news that the strangers did not respect the peace they had made which afterward proved a great misfortune."

Coronado wintered in the Tigua area but never again did he receive help or provisions from these people who fled the area and avoided all contact with the Spaniards. While subsequent Spanish expeditions enjoyed good relations with other Pueblo groups, the Tiguas gave them a wide berth, deserting their Pueblos upon the appearance of the Spanish. In 1598 with the arrival of the colonizing expedition of Don Juan Onate, the Tiguas were again exposed to European civilization.

The Onate expedition established New Mexico as the northern most outpost of Spanish civilization in the New World and began the process of Christianizing the Rio Grande Pueblo people. A mission was founded at the Ysleta Pueblo at New Mexico in 1627 and the Tiguas appeared to remain at peace with the Spaniards until the Pueblo revolt of 1680. The abuse of the Indians at the hands of the Spaniards in New Mexico resulted in the great Pueblo revolt of 1680, the most successful of all Indian uprisings in the New World. The revolt started at the northern Tigua Pueblo of Taos and spread throughout the province with the Spaniards falling back to the south and regrouping at Isleta, New Mexico before beginning their flight to old El Paso, the present day city of Juarez, Old Mexico.

Some historians assert that the Tiguas remained faithful to the Cross and the Spaniards, assisting them in their flight from the Indian wrath. It is just as probable that the Tiguas remembered well their prior chastisement and with the Spaniards in such force in their Pueblo were unable to join in the general revolt. In any event, the Spaniards retreated to El Paso with Tigua burden bearers in their company.

When the beaten Spaniards arrived in El Paso they placed the Tigua burden bearers in a camp called Sacramento on the outskirts of the Spanish settlement near the present day town of Ysleta, Texas. Ysleta itself was founded the following year when the Spaniards, in an abortive attempt to recapture New Mexico, surprised the Tigua Pueblo of Isleta, New Mexico and captured some five hundred Indians bringing them to El Paso as prisoners, a fitting reward for their not having joined in the

Pueblo revolt. For the next 290 years the Tigua served as a frontier outpost protecting the El Paso settlement from the raids of other Indian tribes while the territory was under Spanish, American and Mexican rule. Tiguas from the Ysleta, Texas Pueblo served as scouts for the United States cavalry in the last Indian battle in Texas when remnants of Victorio's band of Apaches who had escaped the massacre at Tres-Castillos, made a final raid through West Texas. The battle occured in Victorio Canyon near El Paso and only two years ago the last surviving member of the Tigua tribe who had witnessed the Tigua Victory dance died at the age of 101.

What was the reward of these faithful Indians who had themselves been scalped by the sharp edge of civilization? Anglos in occupying the beautiful El Paso valley following the war with Mexico, took advantage of Mexican and Indian alike, and in the case of the Ysleta Grant, they saw some thirty-six square miles of land in the hands of Indians who were apparently unable to bring their lands into full productivity. The Anglos particularly objected to the Indian practice of letting much of their land lay fallow. A politician named Albert Jennings Fountain secured passage of a bill in the Texas Legislature in 1872 incorporating the town of Ysleta which coincidentally consisted of the Spanish Grant of thirty-six miles. The law gave the new town the power to donate its public lands to any settler who expressed a desire to settle there. In three short years the entire ownership of the grant was converted into Anglo hands and titles.

In 1962 when the plight of the Tiguas was first brought to the attention of the Bureau of Indian Affairs, they disclaimed any responsibility for the Tiguas on the basis that they had no trust land and had not signed a peace treaty or been recognized by Presidential decree. They further took the position that never having been under actual Federal control or supervision, no trusteeship towards the Tiguas existed and that they were therefore not eligible for any Federal benefits. When it was pointed out that Indian Commissioner Calhoun had inventoried this Pueblo immediately after the war with Mexico and considered it part of his jurisdiction, the BIA denied that this action had created any Federal responsibility because there had never been any trust lands. It was pointed out to them that many Indians from Ysleta Pueblo had attended Indian School in Albuquerque when it suited the convenience of the government to fill the student rolls of that institution and they again denied that this created any Federal responsibility. A private foundation gave the Tiguas financial assistance to hire an anthropologist, Nick Houser, at the University of Arizona, to document their history and their legitimacy as a surviving aboriginal tribe of American Indians. Armed with this documentary history the Tiguas went to the Texas State Legislature seeking official recognition as an Indian tribe.

With the help of then Governor John Connolly and U.S. Senator Ralph Yarborough, the battle for recognition was joined and won. The Texas Legislature passed a statute assuming full legal responsibility for the Tiguas upon recognition and cession of jurisdiction over the Tiguas to Texas by the United States Congress. Following the Federal Enabling legislation the Tiguas have been receiving services and funds from the State of Texas as a recognized Indian tribe. They have been engaged in regaining a land base through purchase of lands with money provided by the Texas Legislature.

Federal agencies such as the Departments of Commerce and Labor have given the Tiguas assistance and they have rapidly moved to the point where self-sufficiency is now in sight. This process of growth has acted to reinforce their already strong cultural tradition. When former Tigua Governor Miguel Predaza was asked what lies in the future for the Tigua tribe he smiled and recalled that they survived the Spaniards and the Mexicans and predicts that the Tiguas will be living in Ysleta, Texas after the last of the Anglos have passed into the oblivion of history.

The Louisiana Coushatta

The Louisiana Coushatta were an indigenous tribe in the Alabama area closely associated with the Alabama tribe. Both of these groups spoke the Muskogee dialect of the Creek nation and were part of the Creek confederacy. They were gradually pushed out of their home land by the advance of the eastern settlements migrating to Southwest Louisiana and East Texas. During the Texas war for independence from Mexico the Coushatta divided into two groups, one group centering in Louisiana and the other amalgamating with the Alabama tribe in East Texas. The Coushatta tribe of Louisiana survived the White onslaught by becoming invisible. Although they had an aboriginal title claim to lands in Louisiana and Texas, they saw the Texas lands fall into the hands of unfriendly Texans by virtue of Texas retaining its public lands upon admittance to the union. In Louisiana their lands were dissipated when the Federal government began issuing land patents to non-Indians.

The Federal government, in the later part of the Nineteenth Century, extended services to various tribes in Louisiana including the Louisiana Coushatta. In the case of the Louisiana Coushatta, the government operated a hospital for them through the auspices of the BIA and held some lands in trust for them. During the 1940's, the United States of America quietly shut down its field operations in Louisiana, closed its hospital, conveyed the trust lands to individual Indians and left Louisiana and its Indians to get by on their own.

Through the efforts of Jim Bowmer, a prominent Texas attorney and former president of the Texas Bar Association, and public spirited citizens of the State of Louisiana, the Federal government after being reminded that it had once extended essential social services to the Louisiana Coushatta, has once again assumed responsibility for them.

The Tortugas

In 1850 United States Boundary Commissioner, Bartlett arrived in the El Paso Valley to begin his job of surveying the new boundary between the United States and Mexico. Bartlett noted that drovers, wagon masters and other employees of the commission, discharged in El Paso after their trek across Texas from Galvestan, were harassing the local citizenry including Mexicans and Indians. To escape this harassment the many Mexican nationals who desired to remain in New Mexico founded the new community of Mesilla on the west bank of the Rio Grande near present day Las Cruces, New Mexico. The Mesilla community consisted entirely of Spanish and Mexican families, refugees from Dona Ana, New Mexico and from Socorro and San Elizario in Texas.

At the same time a satellite community of Indians, now known as Tortugas, was founded on the east bank of the Rio Grande across the river from Old Mesilla. The Indians of this community were Tiguas and Piros from the Ysleta and Socorro Pueblos of Texas. The Indians were probably induced to establish the Pueblo Tortugas in 1850 or 1851 to provide a source of field hands for the Spanish community of Old

Mesilla. In 1906 this Indian group was joined by Mancos refugees from Juarez, Mexico fleeing the Madero revolution.

The Tortugas group was befriended by Eugene E. VanPaten who saw that they received a grant of land of eighty acres out of the River Bend Colony Grant. Title to eighty acres of Tortugas land was placed in the hands of a religious corporation. Control of this corporation has been captured by non-Indians and while a few Indian families remain in the old enclave a majority of the inhabitants today are non-Indians and the tribe is scattered throughout Las Cruces. The Tortugas still have a tribal organization and celebrate their feast day every year and cling desperately to their aboriginal traditions. Efforts to help this group have so far met with no success. The Indian Bureau has denied any responsibility for them even though many members of this tribe have received Federal recognition and attended the Federal Indian school in Albuquerque, New Mexico. Again the exucse of the BIA is that there are no trust lands presently held by the government for the Tortugas, though these Indians lost their land through the neglect of the Federal government.

Attempts to obtain Federal legislation recognizing the Tortugas and placing them under the administration of the Bureau of Indian Affairs have failed. There has been no success whatsoever in efforts to interest the State of New Mexico in their plight since New Mexico is one of those states which has enough Indians as it is. Prominent Indian attorney Robert Nordhause and the Native American Legal Defense and Education Fund have become interested in the plight of these people and are prosecuting a suit in Federal courts through a class action to require the Bureau of Indian Affairs to extend Federal services to this tribe and it would appear that this legal action is the only hope for assistance to this Indian group.

What Happened to the Land Base?

Our initial porposition was that all Indian rights stem from their original ownership and control of land and it is almost invariably the position of the BIA that they will assume no responsibility for an Indian group unless there is a land base. The BIA claims that is is the mandate of Congress that they do not extend services to Indian groups where they do not have trust responsibility for land. This position is not consistant with the many congressional acts dealing with Indian groups. While there are many statues that mention treaties and trust lands, much Indian law extends benefits and special protections to Indians without requiring that they be under previous Federal administration as a result of treaty or Presidential proclamation. Section 177 of Title 25 of the United States Code provides "Purchases or Grants of Lands From Indians" which states:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty. (R.S. & 2116.)

It seems clear this section of the Code does not require that the Indian tribe be under Federal control or trusteeship to require Federal participation at the time of any land transaction. Since this section is based on the act of June 30, 1834, it is obvious that it was intended to apply to all the Indians in the United States and not just those on reservations or otherwise under Federal control. Likewise Section 334 of Title 25 defines the intent of Congress to treat all Indians equally by providing that:

> Where any Indian not residing upon reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled upon application to the local land office for the district in which the lands are located to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land office would have entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of General Land Office (Secretary of the Interior), and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 8, 1887, c. 119, & 4, 24 Stat. 389.)

In trying to obtain relief for the Tigua Indians, we appealed to this section and applications were made under it on behalf of many Tigua Indians for allotments. The BIA denied that the act had any application to Indians who are not members of recognized Federal tribes and further stated that there were no public lands available for entry under this section. It becomes obvious that the land base of an American Indian tribe or group is recognized by the BIA and where Indians have lost their land they are not entitled to any benefits.

This precise issue has never been litigated and hopefully the pending suit by Attorney Nordhause and the Native American Legal Defense and Education Fund will reach this issue. If it does and the Indians win the case could have a profound effect on the unrecognized tribes scattered throughout the United States. Every principal of equity and natural justice would surely hold that where Indians have lost their land through the failure of the United States to protect them or through the illegal acts of state governments they should be given the same benefits as tribes who have been fortunate enough to retain their land holdings.

It would be a wise investment for some foundation or government agency to inventory these tribes and investigate their historical background. With the information compiled the histories of these tribes should be compared with the tribes that presently receive Federal recognition and services. Then a determination should be made whether or not the Federal government has consistently used the existence of a land base to determine eligibility of Indian groups for Federal recognition and services. The problem may eventually have to be resolved by filing a class action on behalf of these neglected Indian communities similar to that presently being heard in the Federal court in Albuquerque on behalf of the Tortugas. Pending a resolution of that problem and the failure to pressure State Legislatures to enact meaningfull state programs for Indian communities, the Federal government must be considered in violation of its own laws through simple inactivity.

Blueprint for Recognition

By recognition of an Indian tribe we mean the creation of a special relationship between an Indian tribe and a unit of government whereby the unit of government undertakes to supply and perform services for the Indian tribe which are not supplied or performed for the public in general. The problems involved in obtaining state recognition for a tribe are basically the same as those involved in obtaining Federal recognition with the additional requirement in the case of state recognition of Federal-enabling legislation if required by the state Attorney General. In the State of Texas the Attorney General felt that the Federal Constitution wholly reserved the right to deal and treat with Indian tribes in the Federal government. Conversely, in the State of Maine, state officials have taken the position that they have the exclusive right to deal and treat with their Indian peoples on the theory that they were dealing with them prior to Maine becoming a part of the United States. This theory is questionable at best.

The first step in obtaining the recognition of an Indian group should be to procur expert assistance in the anthropological or ethnohistorical field. While the Indian group will be well aware of their ethnic identification, it may be difficult to convince the public that an obscure group of local people are distinctly Indian in their ethnic origin and cultural matrix. The expert should be requested to prepare a written study of the particular group verifying their existing cultural traditions and ethnohistorical background. This report will be the corner stone of the recognition effort and a sympathetic and complete analysis of the Indian group by a well known and competent authority in the field will make the recognition process easier.

Coincidental with the obtaining of expert assistance it is necessary to find an attorney to accept responsibility for controlling and coordinating the effort. The attorney should understand that there is little prospect of any fee to be realized as a result of the recognition tion process itself. Collateral rewards down the road are many and a perceptive lawyer will realize that initial fee in this type of law practice is of minor concern. If it is possible to obtain grant financing, then an offer of financial assistance to the attorney may expedite and facilitate his job. The anthropological expert will also likely be willing to serve without fee recognizing the contribution he can make to his profession by undertaking the assignment. However, here again, if financing is available fee arrangements will expedite his work and help insure the complete study and analysis so essential to a successful effort.

The third member of the recognition team is a good public relations man. If a television or newspaper reporter is already familiar with the particular Indian group he will probably be willing to assist in a public relations program for the Indian group. The Tigua public relations man was Jack Salem, the news director for one of the local television stations, who because of an extensive background in all of the news media, was able to develop a very complete and continuing program aimed at eventual recognition. Many side benefits occurred as a result of good public relations work during the process. In the case of the Tiguas, a women's club in Santa Barbara, California heard about the tribe and began a project for the collection of clothing and food for the tribe. Another civic group in Louisiana was of great assistance. Many local El Paso organizations such as the Pilot Club and Kiwannas pitched in and sponsored special programs, such as equipping school children with shoes. The senior class of a local high school, as their annual project, treated the Tigua Indians to a Christmas party with gifts for the children and adults. This particular function so touched everybody that we all redoubled our efforts to assist the tribe.

As the public relations program begins to develop, the attorney should begin to line up political allies for the tribe. In the case of state recognition the political effort should start with local government officials and go straight to the governor's mansion. When

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Governor John Connally of Texas was made aware of the Tigua's plight he accepted the concept of State responsibility and the extension of State services to the tribe. With the Governor's blessings, the actual legislative process of obtaining recognition was quite easy.

The first step in the formal process of obtaining recognition is to draft legislation to submit to the State Legislature. The legislation should identify the particular Indian group involved and define the scope of state responsibility being requested. Above all, the draft should carefully delineate the relationship between the tribe and the state and the tribe and the Federal government. Following recognition by the state government the next step is to get the Congress or the executive branch to determine that the tribe is in fact a community of Indians.

While it is important to seek and obtain state benefits for unrecognized Indian groups, a gross inequity results in the nature and extent of benefits received by groups in different states if state recognition and benefits are the only programs available to Indians. An example this inequity is the difference in the status of an Indian tribe in Texas and the State of Alabama. Texas offers a complete and full range of benefits exceeding the best Federal programs whereas in the State of Alabama there is no program, state or Federal. Every shade and degree of state programs exist. Many programs are inadequate and ineptly administered without sensitivity to the Indian psyche. So while it is essential to obtain state benefits and fight for state Indian rights wherever possible, a high priority should be established by national Indian leadership to insist on general Federal benefits being made available to all Indian peoples regardless of their tribal trust status.

When we discuss the responsibility of the various states to provide services to Indian groups within their boundaries we come to the fundamental truth of Indian existence. No state will voluntarily undertake any programs for Indians because of their status as Indians. Special services for Indians have always been a Federal matter and as we have seen the Constitution specifically reserves the power and authority to deal with the Indian tribes to the Congress of the United States. No matter how wistfully Federal officials may view state responsibility the fact of the matter is that Indian affairs are their business and until the Federal government assumes full responsibility for Indians and for its own failures it cannot expect any state to welcome an additional and specific responsibility for Indians that it did not originally have.

States With Non-Federal Indians

(Excluding Oklahoma and Alaska)

Indian Groups on State Reservations

Indian Groups Without Reservations

Maine

Indian Groups on State Reservations

1. Passamaquoddy Indian Township (near Moosehorn NWR)
2. Pleasant Point (near Moosehorn NWR)
3. Penobscot (near Bangor)

Indian Groups Without Reservations

1. Malecite (near Van Buren)
2. Micmac (near Hulton)

Comments: The State of Maine appropriates approximately one million dollars per year for the 3,000 or so Indians in the State. Approximately one-half of the money is administered by the Department of Indian Affairs, which provides basic welfare and medical services for Indians who live on the three state reservations. The bulk of the remainder of the money is spent by the Department of Education, Division of Indian Education Supervision, which provides schools on the three reservations and tuition for secondary school students who must go off the reservations. The Commissioner of Indian Affairs is John W. Stevens, a Passamaquoddy, who for seventeen years was Governor of the Indian Township Reservation. His address is: Department of Indian Affairs, State House, Augusta, Maine 04330. The Supervisor of Indian Education is Merideth Ring, a non-Indian, whose address is: River Road, Calais, Maine 04619.

New York

Indian Groups on State Reservations

1. Mohawk (near Malone)
2. Oneida (near Rome)
3. Onodaga (near Montezuma WR)
4. *Tuscarora (Niagara Falls)
5. *Seneca (near Fredona)
6. *Seneca (near Oak Orchard NWR)
7. *Cayuga (near Fredona)
8. *Seneca (near Salamanca)
9. *Seneca (near Olean)
10. Poosepateuck (near Long Island)
11. Tonawonda (near Buffalo)
12. Schinnecock (near Long Island)

Indian Groups Without Reservations

1. Montauk (near Long Island)

Comments: *Iroquois (New York State) - largely state supervised; Federal consent required for alienation of land; some Federal programs available. Indian Affairs in the State of New York are administered by the Interdepartmental Committee on Indian Affairs, 1450 Western Avenue, Albany, New York 12203. John R. Hathorn is the Director of Indian Services.

Massachusetts

Indian Groups on State Reservations	Indian Groups Without Reservations
1. Nipmuc (near Worchester)	1. Nipmuc (near Cambridge)
	2. Wampanoag (near Cape Cod Bay)
	3. Wampanoag (near Marthas Vineyard)

Comments: No information available.

Rhode Island

	1. Narraganset (near Judith; Kingston Area)

Comments: Rhode Island does not have any state agency dealing with Indian affairs.

Connecticut

1. Scatcook (near Waterbury)	1. Mohegan (near Norwich)
2. Paugusett (near Bridgeport)	
3. Pequot (near Norwich)	

Comments: The State of Connecticut has recently inacted Public Act 73-660 establishing an Indian Affairs Council and the Indian reservations in Connecticut are administered by the Department of Environmental Protection in conjunction with the newly established Indian Affairs Council. At the present time, state programs are chiefly concerned with the maintenance of buildings and the grounds of the reservations. Some additional aid is provided for needy Indians living on reservations but not receiving or otherwise eligible for general welfare assistance. There are no educational or health programs specifically available to Indian citizens. Brendan F. Keleher is Indian Affairs Coordinator of the Natural Resources Center, Department of Environmental Protections, State Office Building, Hartford, Connecticut 06115.

New Jersey

	1. Moor (near Harrington)
	2. Manticoke (near Selvyville)

Comments: There is no state level agency in New Jersey involved in services to Indian citizens.

Virginia

Indian Groups on State Reservations	Indian Groups Without Reservations
1. Mattaponi (near Westpoint)	1. Amherst County (near Amherst)
2. Pamukey (near Westpoint)	2. Rappahanock (near Rappahanock)
	3. Upper Mattaponi (near Rappahanock)
	4. Chickahominy (near Hopewell)
	5. Person County (near S. Boston)

Comments: There is no state level agency in Virginia involved in services to Indian citizens.

North Carolina

1. Catawba (near Monroe)	1. Haliwa (near Enfield)
	2. Charie (near Warsaw)
	3. Lumbee (near Fayetteville)
	4. Lumbee (near Laurenburg)
	5. Lumbee (near Elizabeth Town)
	6. Waccamaw (near Wilmington)

Comments: In 1971, North Carolina inacted Senate Bill 642, Chapter 1013, establishing a Commission for Indian Affairs for North Carolina. Earlie B. Maynor is Executive Director of the Commission of Indian Affairs and his address is: 213 East Lane Street, Raleigh, North Carolina 27603. The Commission itself consists of eight state officials and twelve members from the various Indian communities.

South Carolina

	1. Summerville (near Summerville)
	2. Catawaba (near Rock Hill)

Comments: No information available.

Florida

1. Seminole (near Big Cypress)	1. Seminole (near Everglades)
2. Misccosukee (near Big Cypress)	

Comments: Florida has recently reactivated a governor's Council on Indian Affairs and is in the process of assembling a staff to deal with state Indian matters under the Department of Community Affairs.

Indian Groups on State Reservations | Indian Groups Without Reservations

Mr. Osley Saunooke is the newly appointed director of the Governor's Council on Indian Affairs and his address is: 2571 Executive Center Circle East, Howard Building, Tallahassee, Florida 32301.

Alabama

1. Creek (near Florala)

Comments: The State of Alabama does not have any state agency entrusted with Indian responsibility, however, there is on file in the State of Alabama, a charter for non-profit corporation known as "The Creek Indian Arts and Crafts, Inc." whose address is: P. O. Box 201, Florala, Alabama. The purpose of this corporation is stated as the maintenance of an Indian store, the operation of a school in connection therewith, and the acquisition of property both real and personal as well as the power to borrow money. The incorporators were Author R. Turner, Charles W. Snoden and Odes R. Turner at the above address. The Charter was filed November 20, 1970.

Louisiana

1. Choctaw (near Harrisonburg)
2. Choctaw (near Glenmora)
3. Tunica (near Bunkie)
4. Coushatta (near Kinder)
5. Choctaw (near Covington)
6. Houma (near Houma)

Comments: Louisiana in 1972 reestablished the Governor's Commission on Indian Affairs which had been inactive since 1820. David L. Garrison Jr. is Commissioner and his address is: 819 Pioneer Building, Lake Charles, Louisiana 70601. Ernest Sickley is Director of the Office of Indian Affairs and his address is: Suite 402, State Office Building, 150 River Side Mall, Baton Rouge, Louisiana 70801. The Commission is currently surveying the needs of the Indian citizens of the state of Louisiana and formulating goals and objectives for the Commission to pursue.

Texas

1. Ysleta Tigua (in El Paso)
2. Alabama-Coushatta (near Woodville)

Comments: The Commission for Indian Affairs for the State of Texas was established by Article 5241Z V.A.T.S., the Chairman of the Commission is Mr. Dempsy Henley whose address is: P. O. Box 348, Liberty, Texas. Other members of the Commission are Mr. Victor Fayne of Nacadoches, Texas and Mr. Barney Wieland of El Paso, Texas. The Texas Commission for Indian Affairs offers a full range of services to the two remaining Indian tribes in Texas and the Executive Director of the Commission is Walter Broemer, Route 3, Box 170, Livingston, Texas.

Indian Groups on State Reservations	Indian Groups Without Reservations
Pennsylvania	
1. Seneca (near Warron)	
Comments: No information available.	
Michigan	
1. Potawatomi (near Jackson)	1. Potawatomi (near Saint Joseph)
	2. Ottawa & Chippewa (near Harrisonville)
	3. Ottawa & Chippewa (near East Jordan)
	4. Ottawa & Chippewa (near Trout Lake)
	5. Ottawa & Chippewa (near Seney NWR)
	6. Ottawa & Chippewa (near Rapid River)
Comments: No information available.	
Indiana	
	1. Miami (near Wabash)
Comments: No information available.	
Wisconsin	
	1. Brotherton (near Appleton)
Comments: In the State of Wisconsin there is no state agency responsible for providing services to Indians, however, there is a committee of the Wisconsin Legislature called the Menominee Indian Study Committee which does concern itself with the extension of available state services to all Indian groups. Mrs. Faith Moulin is Staff Counsel to the Committee and her address is: Room 329, South State Capital, Madison, Wisconsin 53702.	
Kansas	
	1. Chippewa, Munsee, Delaware (near Garnett)
	2. Wyandot (near Kansas City)
Comments: No information available.	

Indian Groups on State Reservations	Indian Groups Without Reservations

New Mexico

1. Tortugas (Tigua, Piro, Manso) (in Las Cruces)

Comments: No information available.

Montana

1. Metis & others (near Antelope)
2. Metis & others (near Hewitt Lake NWR)
3. Metis & others (near Greatfalls)

Comments: The State of Montana does not have a state agency dealing with Indian services. There is, however, a Coordinator of Indian Affairs whose address is: Capital Post Office, Helena, Montana 59601.

Utah

1. Southern Paiute (near Cedar City)

Comments: The State of Utah within the Department of Social Services has a Division of Indian Affairs directed by Bruce G. Parry, whose address is 102, State Capital Building, Salt Lake City, Utah 84114. The Division of Indian Affairs does not extend special Indian service delivery to Indian citizens but does provide planning and technical assistance to non-Federal Indians in the state of Utah.

Arizona

1. Tonto Apache (at Tonto)
2. Yaqui (near Phoenix)
3. Yaqui (near Tucson)

Comments: The State of Arizona has a commission of Indian Affairs whose address is: 1645 W. Jefferson, Phoenix, Arizona 85007.

Oregon

1. Alsea, Molalla, Umpqua & others (near Springfield)
2. Alsea, Molalla, Umpqua & others (near Rosenburg)
3. Alsea, Molalla, Umpqua & others (near Gold Beach)

Indian Groups on State Reservations	Indian Groups Without Reservations

Comments: The State of Oregon at one time operated a state Bureau of Indian Affairs which is now inactive and there is no state program specifically directed towards Indian citizens.

California

	1. Pit River (Modoc NWR)
	2. Jamul Diegueno (near San Diego)

Comments: No information available.

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JURISDICTIONAL PROBLEMS OF INDIAN CONTROLLED SCHOOLS

by

Francis Killer

Oglala Sioux

Vermillion, South Dakota

Introduction

Title I. Title IV. JOM. PL874. Title VII. BIA. All the preceeding symbols appear as a jumble of numbers and letters to most laymen, particularly to Indian parents. They are quite incomprehensible and even frightening to an Indian student who hears he is a "Title I target child" or an "874 student."

An overwhelming confusion caused by a lack of knowledge exists among the general public, Indian parents and even Indian school boards concerning the rules, regulations and purposes of the myriad pieces of legislation dealing with Indian education. This confusion is used by school administrators to perpetuate and expand their power in BIA schools and it is used by public school districts to mask their misuse of Indian monies for purposes that suit their own ends. Thus, we have had the Title I ripoffs in school districts in New Mexico which can be documented in the Natonabah case. We have had a

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generation of JOM ripoffs in Oklahoma. We are now seeing Title IV ripoffs in North Carolina.

In this paper we will be talking about sources of funding of Indian education and the purposes, eligibility requirements, legislation and regulations governing these sources. We will also deal with the actual operations of these programs, the problems they encounter and what can be done to solve the problems and correct the factors which tend to obliterate the goals of the programs.

Before we get lost in the facts, figures, letters and numbers of specific programs, however, let us remind ourselves of the purpose of the Federal government's involvement in Indian education of American Indian children and it is almost universally agreed by everyone involved that this goal is not being accomplished.

The Indian pre-high school dropout rate ranges in extremes from 45% to 62% depending upon which report you rely on for proof. A survey of teachers throughout the nation in 1970 indicated that about 50% of the Indian sixth graders needed assistance with reading, math, language and cultural identity. Institutions appear to be failing Indian children from their first contact with them. Even those students who go through the educational system and "succeed" in graduating from high school find that they have not been prepared for college and that they have not been given enough skills or understanding to earn a living except at stoop labor jobs.

What are the causes of these problems? Are Indian children not as smart as Whites, Blacks, etc.? Dr. Gilbert Voyat, a disciple of Piaget, crushed this argument in a study of Head Start students on the Pine Ridge Reservation using Piaget's almost bias-free intelligence test. He came to the conclusion that Indian children can learn as well as, if not better than, any group of children he has tested throughout the world. Or is it because Indian children meet teachers who equate quietness with retardation? Who equate a sense of sharing with cheating? Who equate poor English with a lack of any knowledge? Who equate a desire for respect as a person with "uppityness" (as it used to be called in the South)?

What issue emerges from this situation? The issue is control, Indian control of the education of their children. A contemporary parallel to the present condition of Indian education would be if the Vietnamese people were to come to the United States and operate the American schools. Vietnamese would be working as administrators and teachers. Vietnamese would control the school boards. The Vietnamese language would be the exclusive language taught and used in the classroom and American children would be judged by their willingness and ability to follow Vietnamese customs. A basic tenet in modern Indian education rejects this situation; Indian people wish to learn reading, math and how to cope with American society but they wish to do this in their own way, while remaining Indian. Assimilation has failed and will continue to fail.

The small number of schools controlled by Indian people are beginning to show that Indian children learn better in an Indian controlled school run in an Indian way. One urban school, the Little Red School House, has even found that in addition to teaching the basics of reading and math, Indian controlled schools help instill a firm sense of cultural identity and pride in the students. Many students who have attended this school have later gone back into the public school system and were able to function much more effectively than before because they had gained confidence in themselves through their Indian experience.

Control is the central issue of Indian education today. And control, true control, means control over the money that is spent in education. This paper relates control and money and how they affect the education of Indian children. Where does the money for Indian education come from? Who controls this money when it reaches the local school district? How is the money being spent in educational programs? What can be done to make this money a more effective educational tool for American Indians?

Obligations

One reality of the entire Indian world is that all Indians do not live on reservations. The Federal government would like to believe that when an Indian leaves the reservation he ceases to be an Indian because if this belief were true it would relieve the government of its responsibility for educating a great number of Indian children. The fact remains that the United States has a responsibility for educating all Indian children, or at least for providing the necessary resources to educate Indian children. This obligation has many facets but three appear to be most fundamental to an understanding of our present situation: previous treaty obligations, general citizenship responsibilities, and the practical sense of accomplishing a designated task assumed by the Congress through various acts.

Almost every major treaty between Indian tribes and the U.S. Government include provisions for the education of Indian children. These provisions are the basis for the BIA's responsibility to provide a system of reservation and boarding schools. However, the treaties do not say it is the responsibility of the BIA to provide for Indian education, but of the Federal government. This distinction means that by treaty right, Indians on or off reservations can demand that the government provide funds for Indian attended schools. The Indian Education Act (Title III of Public Law 92-318) has begun to recognize this fact by providing funds for start-up costs for Indian community schools.

The second obligation is by law. Every child, Indian or not, is guaranteed a free public education. This "free public education" is usually administered by the states and is financed by combinations of property taxes, Federal monies and other sources. The "property tax" financing has led to the problem of rich school districts having good schools and poor school districts having second class schools. The majority of Indian children attending public schools attend schools in the poorer school districts.

The California Supreme Court, in Serrano v. Priest, recently struck down "property tax" financing as unconstitutional. The Federal government and states are working on alternatives for a school financing system that would create more equal schools. Since much of the demand for Federal assistance to the states for monies to fund Indian education has been based upon the property tax argument, i.e., that Indians pay no property tax, it would seem that the major reason for distinguishing state from Federal educational responsibilities for Indian education would now revert to the constitutional commitment of Indian matters to the Federal government.

The final obligation, or the obligation of practicality, is simply the fact that if an adequate education is provided for Indian children and they are able to become productive members of society, everyone will be better off. Educators of liberal persuasion find satisfaction in this contention because of their belief in the development of each individual as an inherent right of national citizenship. Conservatives see in education a long-term chance to decrease the welfare and other benefits which are given to nonproductive members of society and while we feel uncomfortable in justifying education as an economic venture, it still makes a great deal of practical sense. The obligations are there. The task is to set up machinery to carry out the responsibility.

A new light is shed on the whole question by Christopher Jencks in his book *Inequality* which is based on the Coleman Report. The Coleman Report was commissioned by the Johnson Administration to study equal educational opportunities in America. The study supposedly found that there is not as much difference in the schools of rich and poor as was previously thought and that facilities, teachers, etc. make little difference in increasing test score points or improving educational status. In fact two points that came out of the study were:

1. Minority children start with a serious educational deficiency
2. There is a more serious deficiency at the end of school.

The only point that the study failed to compare was the performance of minority children in schools controlled by their parents and set up in harmony with their culture. This omission again brings us back to *control*.

Up until now the U.S. Government has carried out some of its financial obligation to provide education for Indian children but it has allowed absolutely no voice from the Indian people. Federal monies have subsidized the chopping of hair, the ridicule of tribal customs and the prohibition of native languages.

Who Are We Talking About?

It is imperative to discuss the basic issues of the Indian child and control of education by Indian parents before getting into the financial and legislative questions. One of the reasons that present problems exist is that legislators and bureaucrats, and too often educators, get too involved in legal terms and budget sheets while ignoring the basic issues of Indian education.

When we talk of the education of Indian children, who are we talking about? We do not want to get into an extended discussion of who is an Indian but it is a question that must be considered when financing is involved. In many of its programs the BIA sets an arbitrary quantum degree of Indian blood to be eligible for assistance.

Many tribes do not wrestle with the question of membership until they receive a claims payment that must be distributed. Then they usually settle it by giving membership to those who were on the rolls as of a certain date and setting a blood quantum for future births only. The Navajos, however, have not been reduced to measuring the degree of Indianess by blood. They register all children born to tribal members as full-bloods. Some Indians say the government tried to wipe out Indians with bullets and when that failed they began using blood quantum.

Amos Lone Hill, a famous Oglala Sioux dancer and speaker, used to tell the story of a bird which was half-duck and half-goose. This bird was raised among the ducks, but was given a bad time once in a-while by other ducks about being part goose. However, when this bird went out into the territory of the geese, they looked on him as a duck and nothing else. Cher has somewhat dramatized the question in best selling song, "Halfbreed."

While we don't want to dwell on this question since we cannot solve it or do it justice, the impact of blood quantum problems in education is something that must be considered, especially in relation to appropriations. The Indian Education Act defines "Indian" as "any individual, living on or off a reservation, who: (a) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, or any such member; or (b) is considered by the Secretary of the Interior to be an Indian for any purpose;, or (c) is an Eskimo or Alent or other Alaska Native." (20 USC 1221h;P192-318,S453). This complex set of definitions is not the ultimate legal description of an Indian but it is one which can be used for the time being.

Approximately how many Indian students are we talking about? According to an administration study done by H.E.W. in 1970 there are a total of 300,000 Indian students in school at present. These students attend six basic types of schools. There are regular BIA schools, BIA contract schools, Mission schools, community schools, public schools on reservation and public schools off reservations.

BIA Regular

The Bureau of Indian Affairs operates schools for approximately 52,000 Indian children on reservations throughout the United States. We will pick out one reservation school and use it as an example of funding problems which can be pretty much generalized for all BIA schools.

Little Wound School is in Kyle, South Dakota on the Pine Ridge Reservation of the Oglala Sioux Tribe. There are approximately four hundred and sixty students who attend school at Little Wound in grades kindergarten through twelfth grade. Although the four hundred and sixty students constitute the average daily membership, the school actually has about five hundred total enrollment with students coming and going because of the transience of families seeking work and other reasons. Of the four hundred and sixty students approximately thirty to forty are non-Indians.

Little Wound typifies the problems of a regular BIA school. The first problem is that for years and years there was absolutely no input from parents, community people or even tribal leaders on the operation of schools, hiring of teachers, making up of budgets, etc. About three or four years ago the bureau came up with the idea of advisory school boards to pacify the militants and to assuage the cries being made by Indian people for some voice.

The development of an advisory school board only served to agravate the situation because of the "advisory" nature of the powers given to the people appointed to the board. The BIA did not "have to" do what the board wanted it to do and bureau officials made that point quite clear to the community people. The quickest way to kill the participation of Indian people in any program is to have them make a decision and not follow it. Advisory school boards were called puppets and rubber stamps. In many places, the school boards tried to change things and sometimes succeeded.

One of the main things which kept school boards from making a stronger impact was that they had no input into the making of the budget, no way of amending the budget and, often, never even got to see a copy of the budget.

A school board might say "we want an Indian Studies course." The principal would then say "there is no money in the budget for this" and that would be the end of Indian Studies. The request for Indian Studies was, of course, "advisory" but it would not have made much difference because without the powers to examine budgets, the right to change curricula and the authorization to hire personnel, advisory school boards could only have been a window-dressing to the same old educational system that had plagued Indians for nearly a century.

It is a rule of human existence that he who controls the money, controls the direction of the program. In the case of the BIA advisory school boards this truism proves to be overwhelmingly correct. Even when an Indian school board member or community leader or parent realizes that he or she should inquire about school expenditures he or she is given a series of confusing figures mixed up with such technical bureaucratic terms as ADA, ADM, PPE and so forth. The figures are usually given as if they were handed down by God on two stone tablets. There is never any explanation of how those particular figures were devised. They are simply given.

Defenders of the BIA's school system insist that they are using the best method of determining educational needs of American Indians. According to bureau education officials in Washington, the BIA budgeting process is a model of locally initiated input. The local school submits a budget need sheet and this sheet is worked over at the agency level, refined at the area level and then sent to Washington for final polishing. A budget request is then submitted to OMB, reworked and finally an appropriation is made by Congress.

When the appropriation does not match the request, the money must be reallocated. Once the area offices find out how much they are each getting, the reallocation for each school is done. The reallocation is done at the area office. Thus the whole budgeting process basically comes down to the decision of the area office education director.

In a report done by the bureau's own Indian Education Resources Center in March, 1973, it is stated that:

> In preparing this information it became evident that differences exist in the obligations that are cost-coded to these offices. The differences make it difficult to compare on a school by school basis what is actually being spent for students at the various installations.[1]

If the bureau's own experts on education cannot figure out how the bureau's budgets operate and where the education money is going, how are Indian school boards and parents supposed to figure out the mess?

The same report states that allocations run from a high of $8,711 per pupil at Pierre Indian School to a low of $538 per pupil at Turtle Mountain Day School. The conclusions drawn from the report are that it costs more per pupil for a smaller number of pupils and that allocations are probably being made on a basis other than the number of pupils. The report makes no attempt to find out or explain on what basis allocations are actually made.

Another facet of the budgeting maze is the area office's own allocation of government funds. Of the overall allocation to the Aberdeen Area's Indian programs within the Interior Department of $52,159,000, the area office gets $11,135,524 for its own operation. The eleven million plus figure is about 21% of the total Federal expenditures for Indians in the area which is a good sized chunk of the money supposedly going directly to Indians. The overall education budget for the Aberdeen area is $17,847,400 and of this amount the

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area office takes $6,011,105 or over 34% off the top for purposes within the area office. We can see that while the area office overhead is unnecessarily large for the total program operations it is even larger for educational programs.

The 34% which is taken at the area office level consists of public school contracts (JOM), Higher Education (community colleges), scholarship services, counseling and so forth. All these funds are lumped into a general education category called 1740-education. Once these allocations are made at the area office level it is very difficult to trace how they are spent.

The allocation and budgeting maze when applied to an individual school such as Little Wound results in some interesting figures. The tentative FY74 allocation for Little Wound is $374,312 based on a supposed average daily membership of 348 students. Thus, according to the bureau's worksheets, the school is getting $1075 per pupil which looks pretty good compared to South Dakota's average per pupil expenditure of $760. It look good until we see that Little Wound School has closer to 450 students.

The area office explains that forty of these students are non-Indians, and thus not entitled to BIA support. There is no explanation of the sixty Indian students that have not been budgeted for. Another reduction in the compared per pupil expenditure comes when the food allocation is subtracted since this is not included in state budgets.

Another source of funds for Little Wound School is Public Law 874 funds through a cooperative agreement with the Shannon County school system. Public Law 874 provides for Federal aid to school districts which have hardships in raising school budgets because of Federal lands or installations which decrease the property tax base. These funds provide up to $546 per student although some districts receive lesser amounts for some Indian students. Little Wound School gets approximately $80,000 to $100,000 per year in PL 874 funds. These funds are not extra monies for compensatory or special programs since they are used to provide the necessary teachers and supplies for the basic school program.

Two of the main problems with PL 874 funds are that there are mountains of paperwork involved and that the payments arrive as late as six months after the period for which they are intended. The latter problem keeps the school always behind in its financing and disallows any adequate or efficient budgeting. Principals who have tried to budget PL 874 funds ahead of time have found themselves at the end of the school year with no money to pay teachers or no money for supplies.

Another basic budgeting problem illustrated by the Little Wound School situation is construction. Each piece of school construction provided by the Bureau of Indian Affairs requires a special congressional appropriation. This requirement causes bureau school construction programs to be determined not by plan or need but by pressure and politics when appropriation request are made.

The parents and community of Kyle decided about four years ago that they wanted their high school children at home rather than staying in a boarding school. A high school in Kyle was also seen as a solution to the 70% to 80% dropout problem of Indian students from the community. And so a high school was started using the facilities that were originally intended for just an elementary school. There were about forty students the first year of the four year high school. No action was initiated for construction of high school facilities in Kyle.

This year the high school began with approximately 100 students

(9-12 grade) and classrooms had to be constructed in the auditorium. When the rooms being used for shop and science were condemned as safety hazards, there was a crisis.

The school board, the community, the staff and the students united to make phone calls, write letters and make visits to Washington, D.C. With the help of CICSB and Senator Abourezk's office, a temporary building was allocated to Kyle to help alleviate the problem immediately and the Little Wound School was put on a priority list for construction. Even being on a priority list, it will be four to five years before a high school is constructed.

There must be a system better than this for insuring the adequacy of facilities.

Thus from a profile of this one BIA school we see a need for some basic revisions in the method of financing of bureau schools. There is a need for a budget process that allows for a realistic appraisal of needs, adequate appropriations and a determination of priorities by local school boards. As a necessary corrollary to these needs, there must be dissemination of information and training of and technical assistance to school boards in preparing budgets. Indian people must participate in the decision-making budget process on all levels from local to Washington, D.C. Sources of funds should be consolidated so that funds can be more efficiently used. Finally, a planning, designing and appropriations process is needed to ensure the construction of adequate facilities to serve the local Indian people.

Indian Controlled Schools: BIA Contract Schools, Mission Transition and Urban Community

BIA contract schools are a first step in giving full control of education to the parents of Indian children. A BIA contract school is a school where the BIA signs a contract with a local Indian school board and the local board operates the school. In theory this contracting process gives full control of the school to Indian people. They can hire and fire teachers and other personnel, set the school's curriculum and prepare and manage the budget. In practice, however, there are certain stumbling blocks that must be overcome by the board of the contracting school.

The first major stumbling block is akin to the whole allocation process that was discussed in relation to the regular BIA schools earlier in the paper. There is no rhyme or reason inherent in the allocation of money by the bureau to individual schools. When a local school board or tribal group decides to contract to operate their own school they must negotiate with the BIA area office educational people on the amount of money they will receive to operate the school. The final decision on the amount to be allocated to the local school budget rests solely with the local area office and if the local board is not satisfied with their allocation, they must find a way to bring pressure on the area office. Generally the local school board must make the budget a political issue and travel to Washington, D.C. to get action on their allocation. A new system must be worked out where annual political fights over the allocation of school budgets are not a part of operating a local school.

Another problem faced by contracting school boards is that the BIA tends to take a very negative attitude when a community expresses a desire to operate its own schools. The agency office cuts the local people adrift saying "go ahead, see if you can make it." The unspoken implication of this attitude is "see if you can make it without us" and denies the basic posture of the BIA which is its role as an advisor to Indians. The Bureau officials take exactly the opposite view of their role from what they publicly tell Congress and state that if they can't make all the decisions, they want nothing to do with the project. They create an "all or nothing" atmosphere in the community in which Indian people have only the choices of total independence without administrative skills and knowledge to operate their own school or total submission to the BIA demands and directives. Rather than assisting Indians the Bureau officials seem to be blackmailing them into silence.

There are many administrative functions that inexperienced people trying to operate their own schools cannot anticipate. Thus the more experienced bureau officials have a powerful weapon in their boycott to the community controlled schools and in their refusal to be helpful to the local school board. Hidden costs such as bookkeeping, legal fees, personnel advertising, fringe benefits all begin to appear as major items that beginning school boards have not anticipated. These services are things that were taken care of under the general service umbrella of the bureau because it is a Federal agency and while they were figured in some of the general overhead of the bureau, they were not necessarily a part of the educational overhead of the BIA. They beome oppressive budget items when thrust upon the unsuspecting school board that has received its budget on a per pupil allocation that must correspond to the general BIA expenditures for education.

The BIA must develop a policy of either putting enough money in contract budgets to take care of these things or else take care of them as part of the BIA's alleged advisory function. It is only when we see these hidden costs and realize that they are generally provided in the Federal budget by retirement funds, Civil Service, and the Justice Department and various solicitor's of Federal departments that we begin to understand how costly the Federal programs are and we begin to wonder exactly what overhead the bureau is paying for itself.

A third basic problem of bureau contract schools is that of the method of payment. Most contracts run on a cost reimbursement type of operation. Under this system the bureau reimburses the local school district or board after they have spent their money. The local contract school must borrow funds on a credit line if it wished to begin operations and quite often it is difficult for them to plan their credit line to coincide with the school academic program that they wish to undertake. Cost reimbursement has many problems but the chief problem is that a school board always has to operate in a deficit situation and if the reimbursement checks are late or delayed an unreasonable time the school board must face desperate financial problems to keep its school going thus cutting down on the time and energy they could otherwise devote to educational pursuits.

There are currently two other types of Indian schools which are community controlled but are having problems because of financing. These are the mission transition schools and the urban community schools.

Mission transition schools are schools that have previously been run by churches or religious orders and are in the process of being turned over to local Indian school boards. The total number of Indian students attending mission schools is 18,000. Usually with the turnover, the church funds are no longer forthcoming so that other areas of financing must be sought. Sometimes these schools become BIA contract schools, such as St. Michael's in North Dakota, or partial contract schools such as St. Francis in South Dakota. If they are not picked up by the bureau there is little chance of finding financial resources.

The urban Indian community schools in Minneapolis, Milwaukee, and St. Paul are examples of schools that Indian people have started themselves because the large public schools in the metropolitan areas were failing Indian students. These schools have been financed by the OEO, by foundations, and by contributions made by churches and other funding sources. The BIA does not deal with the schools on a contract basis because they are located in the urban area and the bureau disclaims any responsibility for Indians living off the reservation although under what authority is not yet clear.

All three categories of Indian controlled schools, the BIA contract schools, the mission transition schools, and the urban community schools bring up the question of Part A set-aside monies of the Indian Education Act (Title IV PL 92-318). Part A monies go to local education agencies (public schools) based on the number of Indian students, and can be used for just about anything. (We will go into Part A in the next section.) Part A set-aside is mentioned right in the law as 5% of Part A money set aside for Indian controlled schools.

There are three basic problems with Part A set aside as it is now set up. One problem is that there is not enough money in it and the awards are competitive rather than by formula. The second problem is that the act mentions schools "on or near reservations" which seems to eliminate some urban community schools. The third problem is that an "Indian controlled" school has not been adequately defined.

The solution to all three problems is simple. An Indian controlled school can be specifically defined so that schools can know what criteria to meet. The law can be changed to increase the percentage of the set-aside as more schools meet the criteria and apply for money under Part A. The words "on or near a reservation" can be stricken from the act since these words are not used to qualify the LEA's under the regular Part A. Indian parents in urban areas must be given the same opportunity to provide education for their children and control the way in which that education is planned and operated that reservation parents have.

Public Schools

We have spent a great deal of this paper discussing BIA schools, yet the startling fact is that over 75% of the Indian student population attends public schools. In 1970, 100,000 Indian students on reservations attended public schools and 130,000 Indian students off-reservations attended public schools. Many studies have shown that Indian studen achievement is well below other groups in these settings.

One of the basic problems of Indian money going into public schools is that Indian people rarely have any control over the money. In urban areas, Indians are in the minority and so have little voice. Even on reservations, when Indian people are in the majority they are kept from control by jurisdictional ploys or by their natural reluctance to deal with programs involved with the state. In Shannon County, South Dakota when Indian people did unite to elect a majority of Indians to the school board, the State quickly moved to reverse this control using an argument based on property taxes. As a result, Indian people have little or no say in educational programs in Shannon County which receives quite a few dollars of Indian monies.

Many public schools with Indian children receive PL 874 monies which were discussed in the previous section. This money goes directly into the general funds and is used at the discretion of the public school board. There is not even any attempt made in the PL 874 program to provide for an Indian group to monitor the use of funds spent.

Although public schools resist any move for input on the part of Indian parents, they also resist any move by Indians to pull out of the public schools and start their own schools because, in many instances, the public schools are dependent upon Indian monies to operate. The report issued by the President's Commission on School Financing states that 75% of Indian students live in school districts with a state and local per pupil expenditure of less than $300 without Federal support. An example of this is Harmon, Oklahoma which has 100 children of which 50 are White and 50 are Indian. Their financing looks like this:

State and local support	$300	
BIA (JOM)	150	
PL 874	100	
Title I (ESEA)	50	
	$600	PPE

The school budget, even with massive Indian funding, is still $60 below the state PPE of $660.

Part A of the Indian Education Act (Title III, PL 92-318) has taken a step in the right direction. It gives money for Indian students to LEA's but sets up a series of strict rules and regulations in an effort to insure control over these monies by Indian parents. There must be public hearings, election of an Indian parent group and sign-off on the Part A proposal by the chairman of the Indian parent group in order for the local school district to receive funds under this law.

The rules and regulations to insure Indian control of the money are there but what is lacking is the will or the machinery necessary for the Federal government to enforce the regulations. In North Carolina a group of Indian parents were arrested when they demanded to know what was being done with Title IV money. The Federal government did nothing about it. The intention of the act is clear, it is the lack of the adequate monitoring and grievance procedure that thwarts its purpose.

The program source of Indian funds that is currently causing an uproar is the Johnson-O'Malley Act as amended on June 4, 1936 which allows for contracts with states for the education of Indian children of one-quarter or more Indian blood. This law was originally intended to assist public school districts in meeting financial needs created because of large blocks of Indian land and large numbers of Indian children. The law also states that when a school is eligible for PL 874 funds, that JOM funds would be used to meet Indian education problems in "extraordinary or exceptional circumstances." After 1958, PL 874 in effect paid taxes on Federal and trust lands so that JOM money could be released and used to "meet the special needs of Indian children."

In reality, JOM is another case of Indian people having no control overy money appropriated for the education of their children. There are now Indian advisory committees for JOM monies but they are given no real power and are usually just used to sign off on programs. As with BIA regular schools, Title IV committees, etc., there is usually no real involvement in the budgeting process. School administrators take the money and use it for pretty much what they want.

Some of the most flagrant abuses have been documented in The James Gang Rides Again, a study of JOM in Oklahoma. The monies are used for all students not especially for Indians and administrators view the money as theirs to use as they wish. Neither the State nor the bureau have set up an adequate monitoring and evaluation system to assure the proper use of funds. The evaluation form is ridiculously inadequate particularly when compared to the myriad forms Indian groups must fill out when they receive Federal monies.

Newtown, North Dakota is a school district which typifies the problems of Indian monies going to public schools. The Newtown School District has a total of 797 students in grades K-12 of whom 364, or about 46%, are Indian. A few years ago, due to a precedent setting court decision on jurisdiction, Newtown was declared to be on the Ft. Berthold Indian Reservation; however, the non-Indian business community still maintains control over most facets of Newtown life.

This control extends into the area of education. Although 46% of the Newtown student body is Indian, there is only one Indian on the school board. There is a 75% dropout rate for Indian students in high school. Over 90% of the Indian students in eleventh grade are failing. There are no courses in Indian history, Indian language or tribal government at any level. There is one Indian teacher in the whole system.

Newtown schools received over $206,000 in Indian monies in 1973. This figure averages $258 per student (Indian and non-Indian) or $593 per Indian student. The breakdown of sources of Federal monies was:

Johnson-O'Malley	$89,013

PL 874	90,000 (approximate)
Title IV	27,000
	$206,013 (approximate)

At the end of FY 1973, the Newtown School District reported a carry-over balance of $190,000. An education administrator who deals with schools throughout North Dakota stated that the usual carry-over for a comparable school district is $20,000 to $30,000. These figures might lead to a conclusion that this school district is using Indian funds to cover expenses which should come out of their operating budget rather than to provide services to meet the needs of Indian students.

The PL 874 money goes directly into the general funds so that there is no control whatever by Indian parents. The JOM and Title IV funds both have Indian advisory committees but up until very recently Indian parents on these committees have had no resources to draw upon to assist them in drawing up these programs and to counteract the influence of school administrators.

For example, a large amount of the JOM money was used for partial funding of a number of teaching positions so that the school board picked the personnel to fill these positions. Because there were no explicit goals or work programs, there was no way at all to monitor or evaluate the effectiveness of these programs. The Indian parents on the committees are given too little information on the different programs so that they could not use the programs monies in the way that it would be most effective. This situation illustrates a basic need for organizations such as the Coalition of Indian Controlled School Boards which can get correct information to Indian parent groups, assist these groups with writing up of programs and help them negotiate with the non-Indian power structures.

The Oklahoma JOM report hits on a couple of points which bring out a central problem with Indian education monies. It states:

> All the American governmental funding organizations: OEO, HEW, etc. never fund to meet Indian needs, instead we must use needs to fit the rhetoric, while creating organizational structures to fit the agencies' funding programs....The following of bureaucratic procedure creates competitiveness and jealousies among Indians and thus the energy is expired internally rather than used aggressively to fight for human rights.

Funding that fits the bureaucracies and organizational structures rather than getting to the basic question of adequate education of Indian children is a central theme of Indian educational financial problems.

Conclusion ... Or ... Beginning

The solution to the central problem of the financing of Indian education is as simple to a logical, rational mind as it is mind-boggling to the denizens of the bureaucratic deep. All the monies appropriated for Indian education should be funneled through a single governmental agency with adequate funding for all programs and a uniform set of regulations. A monitoring system should be instituted to make sure these monies are ultimately put in the hands of Indian parents for the education of their children.

We can go through a long list of recommendations for the revision of Johnson-O'Malley, PL 874, Title IV, BIA contracting regulations, etc., but in the end the Indian education process will not noticeable improve until it is controlled by Indian people from the local level through the national level.

Indian parents must be given the necessary resources (monetary, informational, manpower) to develop an Indian educational system that will do the two basic things which they desire an educational system to do. First, the system must instill a sense of self-worth in their children based on traditional tribal values and culture. Second, the education system must give their children the tools to function in Indian society and in non-Indian society.

> I have advised my people thus: When you find anything good in the White man's road, pick it up; but when you find something bad, or that turns out bad, drop it, leave it alone.
>
> Sitting Bull

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PUBLIC SCHOOL FINANCING CONSIDERATIONS FOR AMERICAN INDIAN EDUCATION

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INTRODUCTION

School support programs have a long and diverse history.[1] Many factors have entered into the development of public school finance; historic, social, economic, geographic and psychological are only a few. This diversity in school financing is well documented by such examples as Hawaii which has a completely centralized financing system. New England states have more decentralized financing systems because these systems have evolved their financing philosophy from the local government or "town meeting."[2]

The Tenth Amendment of the Federal Constitution gave the responsibility of education to the states. During the Nineteenth Century most states gave the responsibility to local governments in the form of authorizing the levy of local taxes. Because of this piecemeal approach no conceptual theory for educational finance was developed and, therefore, no two systems finance their public schools in the same way.[3]

During the early part of the Twentieth Century some of the school finance theorists emerged. From the foundation put forth by such individuals as Ellwood P. Cubberly, George D. Strayer, Jr., Paul R. Mort and others, some of the crucial issues such as values and problems of school finance systems in the American society were studied and contemplated. The basic question such as equalization, relationship of education to society, who exercised control, revenue sources, and many other factors were partially answered.

Although there is still a wide diversity among state finance programs, as shown in Table I, there is greater internal consistency and knowledge than existed at the turn of the century.[4]

Table I. Classification of the States' Basic Multi-Program by Type of Plan

Flat Grants		Strayer-Haig-Mort		Percentage Equalizing	Guaranteed Valuation of Tax Yield Plan	Complete State and Federal Support
Uniform	Variable					
Arizona[a]	Arkansas[b]	Alabama		Iowa[c]	New Jersey[d,e]	Hawaii
California[f,g]	Delaware	California[f,g]		Massachusetts	Utah[h]	
Connecticut	Nebraska[i]	Colorado		New York[d]	Wisconsin	
Oregon[l]	New Mexico	Florida		Pennsylvania		
	North Carolina	Georgia		Rhode Island		
	South Carolina	Idaho		Vermont		
		Illinois				
		Indiana				
		Kansas				
		Kentucky	North Dakota			
		Louisiana	Ohio[d]			
		Maine	Oregon[j]			
		Maryland	South Dakota[f]			
		Minnesota[d]	Tennessee			
		Mississippi	Texas			
		Missouri	Washington			
		Montana[d]	West Virginia			
		Nebraska[i]	Wyoming[f]			
		Nevada	Oklahoma			
		New Hampshire	Virginia[d]			
		New Jersey[d,e]	Alaska[k]			

Source: Johns, T. L., Foersler, J.S., Public School Finance Programs, 1971-72, U.S. Department of Health, Education and Welfare/Office of Education, Washington, D.C., 1972.

Table I -- Continued

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a/Arizona distributes $15,069,000 in equalization aid; however, the State's Primary School funds are distributed on a flat-grant basis.

b/While local wealth is not taken directly into account in the major portion of the primary school fund, the distribution does equalize to some degree.

c/Iowa will operate under a Strayer-Haig-Mort Program in 1972-73.

d/1972-73 school year reported.

e/While New Jersey operates under a guaranteed valuation program, the law guarantees the levels of funding under the previous Strayer-Haig-Mort type program, and so both classifications apply.

f/1970-71 school year reported.

g/California operates under a combination flat-grant and Strayer-Haig-Mort Program.

h/The Utah program could also be classified as a variation of the Strayer-Haig-Mort Program.

i/Nebraska operates under a combination flat-grant and Strayer-Haig-Mort Program.

j/Oregon operates under a combination flat-grant and Strayer-Haig-Mort Program.

k/The Alaska plan combines the Strayer-Haig-Mort foundation approach with the percentage-equalizing method of determining the local share of the calculation.

School finance programs are influenced, as stated above, by many factors, but the fundamental values and beliefs held by the people aid their leaders. The educational policies are realigned from time to time as the basic values and beliefs of people are altered.

What are the goals of the majority of the people? The following are some of the aspects pertaining to education that must be answered:

1. We should provide at public expense, adequate and appropriate educational opportunities for everyone through at least the secondary schools or the equivalent.
2. Public education should help to remove traditional caste and class barriers and to facilitate social mobility.
3. Every child, regardless of race, the economic condition of his parents or other factors should have an adequate opportunity to develop his talents in order that he may have full access to the benefits of, and make optimum contributions to, the social, political, and economic system of the nation.
4. The provisions for the organization, operation and support of schools should be designed to ensure adequate and equitable educational opportunities for all students.
5. The provisions for financing schools should be designed to ensure equity for all taxpayers.
6. The quality of education provided for public school children and youth should be primarily a function of the taxable wealth of the state and the nation rather than of the local school district in which they live.
7. The funds provided for the support of education should be utilized insofar as practicable to ensure optimum returns on the investment made.
8. The citizens of a state and their representatives as well as those directly involved in the process of education should be held accountable for the educational output.
9. The provisions for education and its support as well as the programs and procedures utilized must be modified as found necessary to meet the needs of a changing society.
10. All changes in or affecting education should be carefully and systematically planned after considering feasible alternatives and probable consequences; they should not be made as the result of expedient decisions or actions.[5]

CURRENT PROBLEMS--FINANCING EDUCATION

There are numerous problems confronting education today. Four of the problems that must be faced concerning the financing of education are: (1) Fiscal Problems--where do you get the money needed for education?--how do you finance education adequately, particularly from revenue obtained by taxes; (2) Equalizing educational opportunities--how do you allocate fiscal resources after you get it?--this concern has been brought sharply to the forefront due to recent court decisions. These court decisions state that a child's education is a function of the wealth of the district in which he or she lives; (3) Efficiency--achieving maximum efficiency for a school district so that the district can obtain the largest possible educational output within the limits of its budget; (4) Adequacy--what constitutes adequate funds for a quality education.

Fiscal Problems

The fiscal problem of education is complicated by numerous factors. The first being the cost of education is rising rapidly. Second is a combination of factors which deals with the generation of revenue. Rising cost expenditures have increased greatly since 1930 using any table of measure. Table II gives an analysis of the rate of growth during the period of 1930-1970. Table II takes into consideration the decreased purchasing power of the dollar and the tremendous increases in school population. Column 2 shows the total expenditures (uncorrected for decreased purchasing power) from 1930-1970. The third column shows the cost of living index increased 114 percent during the period from 1929 to 1969. When total expenditures are converted to 1969 dollars to determine purchasing power it

Table II. Trends in Total Expenditures for the Public Schools, 1930-1970.

(Includes All Items for Current Expense, Capital Outlay and Interest on School Indebtedness)

Year Column 1	Expenditures in Current Dollars (Millions) Column 2	Consumer Price Index (1957-59 Prices=100) Column 3	Expenditures in Terms of 1969 Dollars (Millions) Column 4	Average Daily Attendance (Thousands) Column 5	Expenditures Per Pupil In ADA In 1969 Dollars Column 6	Percentage of the Gross National Product Expended for the Public Schools Column 7
1929-30	$ 2,307	59.7	$ 4,935	21,165	$233	2.2
1939-40	2,331	48.4	6,149	22,042	279	2.6
1949-50	5,768	83.0	8,877	22,284	398	2.2
1959-60	15,613	101.5	19,641	32,477	605	3.2
1969-70	39,489	127.7	39,489	42,168	936	4.2
Percent Increase 1929-30 to 1969-70	1,612	114	700	99	302	91

Source: Financing Education: Legal and Fiscal Alternatives. Alexander, Kern, Johns, R. L., Jordan, K. Forbis, Charles E. Merrill & Company, p. 18.

is shown that the total increase is 700 percent rather than the 1,612 percent reflected in column 1. Column 6 shows the expenditures per pupil considering that the student population increased 99 percent (column 5) during the period 1929-1970. The expenditure per pupil from 1929-1970 increased from $233 to $936 or 302 percent. These figures indicate the tremendous increase in school financing during the past forty years.

Another way of examining the costs of education is to compare the increases in expenditures with the increase in the gross national product. Column 7 shows that there has been an increase from 2.2 percent of the GNP to 4.2 percent which is a 91 percent increase.

One-fourth of the increase in expenditures can be attributed to increase in student enrollment. Some of the other factors which influence the increase are more professional personnel, inflation, and rising benefits.

During the period of rapidly increasing school costs, there has also been a shift in the revenue source. Local revenue supplies approximately 52 percent of funds spent on elementary and secondary education, while 41 percent comes from state sources. (See Table III.)

Table IV shows the considerable differences between states such as Delaware or Hawaii in which a large fraction of school expenditures come from state sources and New Hampshire or Nebraska in which local revenues dominate.

Revenue Sources (Property Tax)

About 98 percent of all local tax revenue is derived from property taxes. The property tax has been the main villain in the "Taxpayer's

Table III. Percentages of Revenue Received from Federal, State and Local Sources for Public Schools, 1929-1971

Years	Federal	State	Local
1929-30	0.3	17.0	82.7
1939-40	1.8	30.3	67.9
1949-50	2.9	39.8	57.3
1959-60	4.4	39.1	56.5
1961-62	4.3	38.7	56.9
1962-63	3.6	39.3	57.1
1963-64	3.7	40.0	56.3
1964-65	3.8	39.7	56.5
1965-66	7.8	39.1	53.1
1966-67	7.9	39.1	53.0
1967-68	8.8	38.5	52.3
1968-69	7.4	40.0	52.6
1969-70	7.2	40.9	51.8
1970-71	7.2	40.0	52.8
1971-72	7.1	40.9	52.0

Source: U.S. Office of Education and Phi Delta Kappa "Financing the Public Schools," Bloomington, Indiana, 1973.

Table IV. Distribution of State, Local, and Federal Financing of Public Schools, by States with the Four Highest and Lowest State Proportions, 1970-71 School Year

State	Percentage Distribution			
	State	Local	Federal	Total
States with highest proportion of state financing				
Hawaii	89.4	2.9	7.7	100
Delaware	71.2	21.7	7.1	100
Alaska	69.7	12.8	17.5	100
North Carolina	66.2	18.8	15.0	100
States with lowest proportion of state financing				
Oregon	19.6	74.5	5.9	100
Nebraska	17.6	75.8	6.6	100
South Dakota	15.1	73.9	10.9	100
New Hampshire	9.6	86.2	4.3	100
U.S. Average	41.1	52.0	6.9	100

Source: National Education Association, Ranking of the States, 1971. Research Report 1971-R1 (NEA, 1971) revolt" as labeled by the media. Bond issues and property tax increases have been defeated at an alarming rate. This "revolt" has not visibly slowed the national rise of school budgets.

Various explanations have been given by individuals and groups for the phenomenon of "revolt." These explanations are (a) cost rising too fast, (b) dissatisfaction with the schools' economic recession, and (c) dropping birthrate. According to the Gallup Poll, the property tax is the most unpopular tax in the United States. In February of 1973, 68 percent of Americans felt that their property tax was too high. According to this poll, more citizens were disturbed over their property tax than any other tax including Federal income and state sales tax.

Although the property tax is highly disliked by the American public, it is the traditional support for financing of education and other local government activities. Property tax yield expressed as a percentage of the GNP have remained roughly constant in the last decade at about 3.4 percent. At present approximately 44 percent of the property tax is collected from households in the form of tax on real property and some personal property, about 43 percent comes from non-farm business property, about 9 percent from farm property, and the remainder from miscellaneous types.

The property tax dominates the local taxing situation. The local government usually has no other taxing source other than the property tax. Even if other taxes were levied they would fail to produce as much revenue as the property tax.

The property tax suffers from certain limitations which restrict its capacity to finance additional efforts for public schools and local governments. There is the always present political resistance plus other flaws such as equity of the property tax. There is always the aspect of equity when dealing with the property tax.

Equity, one of the most important aspects in evaluating a tax, can be considered to have two major types. The first is the grave disparity being offered children in different school districts and the more classical argument of difference borne by taxpayers in different districts and within the same district.

The inequities for both the school children and taxpayers can be explained by the fact that local governmental units administer the property tax. There are numerous local units of taxable wealth per child, and aspiration levels between districts vary sharply. Therefore, some taxpayers are more heavily taxed than others. This has been pointed out quite plainly in the recent court cases of Serrano v. Priest and Rodriguez v. San Antonio Independent School District.

The second issue of taxpayer burden can generally be broken down into (a) unequal treatment of equals--this is primarily due to uneven assessments. Lack of uniformity of these assessments results in different tax burdens on individuals owning equivalent amounts of property. The process of assessment is very subjective and unscientific, therefore, the difficulty is in part inherent in the tax; (b) inequity from varying ratios of taxable property to total wealth and total income. There is very little correlation between the property tax and measures of taxable wealth such as income or total net worth. This puts heavy burdens on persons owning homes but having little current income. The same inequity is evidenced by businesses that have a high ratio of real property to sales; (c) regressive distribution of burden. In the past, regressivity has been viewed in the traditional sense of a tax burden that takes a larger percentage of income from low income groups and tends to bear less heavily on income groups as their income increases. There is conflict among experts at the present time pertaining to the theory of regressivity for property tax. But, generally speaking, the property tax bears a heavier burden upon taxpayers in areas with a high effective tax rate.

The Brookings Institution in Setting National Priorities for 1973 asserts the property tax is progressive with respect to income incidence. One area of property taxes that is coupled with measures of equity is revenue elasticity. The property tax has displayed an impressive elasticity over the last two decades. The elasticity being measured by the relationship of increases in property value to increases in national income and the relationships of change in assessed values to changes in sales values.

Other sources of revenue will not be covered to the extent that property tax has been because they are not used directly by the school districts. Usually other revenue sources are used for education through state grants to school districts.

Revenue Source (Sales Tax)

The sales tax is used by 45 states. One state (Alaska) uses local sales tax while only four states (Montana, New Hampshire, Delaware, and Oregon) have no sales tax at all. The sales tax ranges from two percent to six percent with a median of three percent. There are varying methods of administering the sales tax. These methods of administering vary between exemption on items such as food to credit against tax liability.

While the sales tax is relatively easy to collect and generates tremendous amounts of revenue, it has some drawbacks. Some of these drawbacks are: (a) it can be regressive relative to income, (b) it can cause economic distortion, and (c) it can affect economic decision. Even with its negative aspects, it still produces better than thirty percent of total state tax revenue; therefore, it plays a vital role in educational financing.

Revenue Source (Income Tax)

The advantages of the personal income tax are so well known that only a brief summary is required. Not only does it provide major revenue for the Federal government but approximately forty-one states utilize the state income tax.

Some of the advantages of the personal income tax are that it: (a) relates to the tax paying capacity of the taxpayer, (b) takes into account special circumstances such as illness, size of families, and other hardships, (c) has a high degree of elasticity, and (d) is easy to collect through payroll deduction. Two of the negative aspects of the income tax are: (1) revenues decline rapidly in times of economic recession and (2) evasion is possible due to exemptions and other complicated factors.

Although other taxes, such as corporate income, excise, estate and inheritance and severance, are extremely important to any school funding program they will not be discussed in this paper. A thorough analysis should be made of all revenue sources when planning finance programs.

Equalizing Educational Opportunity

Equalizing--The per pupil expenditures create a prime force case that the educational opportunities for children are not equal. This point is clearly illustrated when one looks at the expenditures per pupil in selected states for 1971-72.

Table V. Estimated Current Expenditures for Public Elementary and Secondary Schools Per Pupil in Average Daily Attendance

1971-1972

State	Per Pupil Estimated Expenditures
New York	$ 1,513
New Jersey	1,280
Massachusetts	975
Wyoming	940
Colorado	872
Nebraska	714
New Hampshire	834
North Dakota	823
Idaho	732
West Virginia	726
Mississippi	655
National Average	$ 970

Source: Financing the Public Schools: A Search for Equality, Phi Delta Kappa, Bloomington, Indiana, 1973, p. 14.

The preceding table (Table V) shows averages per state but even greater disparities exist among districts within states. In California the wealthiest district had fifty times as much wealth as the poorest and more than twice as much revenue. The wealthiest district was receiving $2,500 per pupil while the poorest received less than $600 in state and local revenue.

Because of recent legal decisions, the equalizing of educational expenditures is coming under close scrutiny. The disparities cannot be ignored in the allocation of funds to support schools. Increased attention is being given to the desirability of providing widely differing programs to assure that pupils have equal educational opportunity.

When equalizing educational opportunity for pupils the policy makers must have one essential statement in the educational credo--we believe the opportunity to obtain a public education should be substantially equal for all children and growth should be appropriate to their needs.

Efficiency

One of the greatest issues that confronts education today is the cry for efficiency. With an ever increasing demand on public revenues for increased police protection, health services, etc., the public is demanding greater efficiency.

There are numerous ways of viewing efficiency. Some of these are: (a) economies of scale which take into consideration the size of school districts, (b) technical efficiencies, and (c) allocative efficiencies.

All economic alternatives should be considered when planning a finance plan. For every dollar put into education, a comparable value should be produced. Education should make changes and adaptation whenever necessary to increase the productivity, efficiency, and quality of education.

Adequacy

The question of whether school funds are adequate is one that will never be settled. This same adequacy question applies to health services--are public health facilities adequate for all Americans?

The adequacy question is the foundation upon which the theory of public expenditures rests. It has been stated:

> The claim of a definite appropriation is realtive, and it is not until the function which it is intended to serve is fitted into the general scheme of social activities that the strength of this claim can be measured. In view, therefore, of the persistence which the question of governmental functions asserts itself, one is justified in the conclusion that it holds the key to the theory of public expenditures.*

FEDERAL AID

A majority of Federal funds allocated to Indian schools at the present time are done so through a central financing system of the Bureau of Indian Affairs. For the purposes of this paper the present financing system, as such, will not be discussed. The present and future aspects of Federal school financing will be discussed.

During the decade of the 60's Federal aid to education grew rapidly. Even with this rapid growth the Federal government still pays only approximately 7% of the cost of elementary and secondary education. Although studies as far back as the 1930's recommended that Federal money be appropriated to education for general purposes this, for the most part, has never been done. The basic Federal financial support for education has been to provide stimulus for specific educational activities. Thus, there are programs to support such "categorical" purposes as vocational education and school libraries, to name only two. The U.S. Office of Education published "Guide to OE-Administered Programs, Fiscal Year 1970" in which approximately 132 programs listed the categorical classification of Federal programs. Some of these programs are:

1. Educational television

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*Henry C. Adams, The Science of Finance, New York, 1898, p. 54.

2. Construction grants for undergraduate academic buildings
3. Vocational education facilities
4. Construction of libraries
5. Purchasing of school library resources and instructional materials
6. Establishing guidance programs
7. Improvement of foreign language programs and sound studios by paying foreign consultants to do developmental work in these areas
8. Helping educationally deprived children
9. Providing additional educational assistance to Indian children in Federally-operated schools
10. Developing and testing educational innovations

These are but a few of the many categorical grants sustained by the Federal government. In addition to the Federal programs administered by the Office of Education, there are programs administered by the agencies such as the Department of Agriculture, Bureau of Indian Affairs, National Science Foundation. (Appendix A--attached Federal Program 1777-1968)

The present Federal administration has attempted to consolidate certain categorical aid programs by combining them into a special revenue sharing program. During recent years the administration has requested only modest increases for education. If consolidation of continuing categorical aids into block grants were realized, it would seem feasible to combine programs such as:

1. Vocational Education
2. Education of children from low-income families
3. Compensation to schools for Federal tax-exempt property
4. Education of handicapped children
5. School food service
6. Educational research and development

Some of the categorical grants were intended to be only temporary.

But temporary things have a way of becoming permanent. Often the "beneficiaries" of certain programs lobby effectively to maintain programs beyond their usefulness. Therefore, in the absence of unforeseen events one may expect a sizeable number of categorical programs to continue.

Perhaps a more effective use of Federal funds would be to combine categorical programs into the long requested general aid. A few plans that might be used to distribute Federal aid are:

Plan I - A national foundation program providing a minimum educational level for all children. This would be equalized according to ability of states.

Plan II - Flat grants with no required local or state effort to be used as a general purpose grant.

Plan III - Equal grants but requiring each local and state government to provide a certain effort.

These are only three possibilities. There could be an indefinite number of plans developed. The best one can only be determined in terms of purposes desired to be served by general Federal aid and their order of importance.

EDUCATIONAL NEEDS AND FINANCE MODELS

This section will be aimed at developing potential models. These models will represent various methods that might be used in comprehensively planning a school finance model.

When considering any type of program, full consideration must be given to identifying educational needs. Any allocation model should take into account that all children are not alike and, therefore, have special or unique educational needs.

Educational Program

Programs that require specially trained instructors, special equipment and/or supplementary materials cost more than the basic or regular program that is provided.

Early Childhood Education.

Current research shows that the formative years of early childhood are extremely important to future educational success. The three- to five-year age bracket is generally considered the range during which organized educational programs have a lasting effect. Other types of programs that should be considered are day-care centers, nursery school, parental education, and the kindergarten.

Special Education for the Handicapped.

The special education child is usually considered in one of the following areas: impaired hearing, speech and/or sight, mentally retarded, emotionally disturbed, physically handicapped, and multi-handicapped. The above physiological and psychological handicaps require special teachers and/or equipment which increase the cost of education per child. It is estimated that eight to nine percent of the total school population falls within the handicapped range. It is reported that this percentage is higher for Indian children. Some estimates are that it is twice the percentage for the total population.

Compensatory Education Programs.

It has been reported for a number of years that a sizeable number of Indian children come from culturally deprived or impoverished homes. These observations were confirmed by the large-scale Educational Opportunities Survey, on which the Colman report of 1966 was based. Table VI shows one set of achievement data.

Table VI. Grade Level Equivalents Based on Verbal Achievement of Sixth Grade Students, by Social Class and Ethnic Group, 1965-1966 School Year

	Social Class Group[a]		
Ethnic Group	Low	Medium	High
Negro	4.1	4.7	5.3
White	5.6	6.5	7.3
Puerto Rican	3.1	3.6	4.6
Mexican	4.1	4.8	5.7
Indian	4.4	5.1	6.0
Oriental	4.7	6.1	7.0

Source: *Setting National Priorities the 1973 Budget*, Brooking Institution, Washington, D.C., p. 334, from *On Equality of Educational Opportunity.*

[a] Social class groups are based on father's and mother's educational level and father's occupational level.

Compensatory education children, because of such problems as learning difficulties, emotional and social maladjustments, require small group instruction, additional tutoring, extensive counseling, individual attention and medical, diagnostic, and remedial services. Many of these children can attain higher levels of success in schools and move on to productive roles in adult life.

Vocational Education.

Because of rapidly developing technology, vocational education is not only essential to the individual but vital to society. With the new thrust of career education, the awareness of vocational opportunities permeates the entire school program. Career education and vocational education programs used in concert help the student evaluate his own aptitude, interests and abilities as they relate to the hundreds of occupational opportunities offered by society. These programs generally are more expensive than the regular program but have an excellent return on the investment in human capital.

Adult and Continuing Education.

It is projected that such programs as adult and continuing education will have a heavy demand in the future. Today most of these programs are of the ad hoc nature. Comprehensive planning with firm curriculums are needed for any school system.

Regular Program.

The basic or regular program should not be slighted when planning school support programs. Occasionally these children are overlooked when the special needs of other children are considered. Realistic cost figures should be attached to the educational program for these children. Regular programs are not the high cost programs but they are extremely important because a majority of the children are in these programs; therefore, they should not be underestimated nor underfinanced.

Educational Services and Facilities.

There are a number of other areas that should be considered when developing a state supported program. These areas are pupil transportation, food services, health services, pupil personnel services, and educational facilities.

The planners of any educational program should take into consideration the educational needs, services and facilities that have been previously discussed. These need to be planned and coordinated so as to have a program that has balance and quality.

Cost Differentials

Educational programs designed to meet the needs of pupils vary widely per pupil cost. For example, it costs more to educate a pupil in high school than it does for an elementary pupil. Special high cost programs such as compensatory education and vocational education cost more per pupil than regular programs. Since there is wide disparity between per pupil needs, any system that is developed should include cost differentials or pupil weightings.

The weighted pupil technique is based on the assumption that because of special needs, lower pupil-teacher ratio, operating costs are higher for certain programs than the typical elementary program; therefore, a basic elementary child in grades 1-6 is assigned the weight of 1. This weighting of 1 for the regular elementary school pupil is used as the initial starting point for the entire weighting system. If it is found that it costs approximately twice as much per pupil to educate a handicapped child then it would be assigned a weight of 2. Appropriate weights are also assigned to pupils enrolled in other high cost programs.

Any factor can be added which increases the cost of providing educational opportunities for pupils. Such an example would be that it costs more to educate children in isolated schools because of geographic barriers; therefore, appropriate weights should be determined for isolated schools.

Table VII was developed by the NEFP for current best practices in school systems around the country. Although for your school situation it might not be exactly accurate or current, it gives a good example or point from which to start.

A group desiring to provide for cost differentials should develop the weights most appropriate for its funding program. Variations in costs have been ascertained between geographic locations although they appeared to have similar programs and program structure. For these reasons each group should study its pattern of expenditures in the local situation to identify the most appropriate weights for inclusion in its program. This costing-out-of-programs to determine the proper weights for selected programs will make any program more efficient and effective.

As groups study funding programs, attention should be given to the following concern:

1. How should funds be allocated?
2. Are the differences in costs among programs recognized?
3. What support for educational services is needed?
4. What support for educational facilities is needed?

Table VII. Scales Used for Weighting Pupils

Programs	Weighting for Cost Differential	($500 basic) Cost
Column 1	Column 2	Column 3
Early Childhood		
3 year olds	1.40	$700
4 year olds	1.40	$700
Kindergarten (5 year olds)	1.30	$650
Non-Isolated Basic Elementary and Secondary		
Grades 1-6	1.00	$500
Grades 7-9	1.20	$600
Grades 10-12	1.40	$700
Isolated Basic Elementary and Secondary[a]		
Elementary Size		
150-200	1.10	$550
100-149	1.20	$600
less than 100	1.30	$650
Junior High		
150-200	1.30	$650
100-149	1.40	$700
less than 100	1.50	$750
Senior High		
150-200	1.50	$750
100-149	1.60	$800
less than 100	1.70	$850
Special (Exceptional)		
Mentally Handicapped	1.90	$950
Physically Handicapped	3.25	$1625
Emotionally Handicapped	2.80	$1400
Special Learning Disorder	2.40	$1200
Speech Handicapped	1.20	$600
Compensatory Education		
Basic: Income under $4000	2.00	$1000
Vocational-Technical	1.80	$900

Source: National Educational Finance Project--Best practice weightings.

[a] In order to be weighted for isolation, elementary schools must be 10 miles or more by road from another elementary school; junior high schools 15 miles or more from another junior high school and senior high schools, 20 miles or more from another senior high school.

Alternate Finance Plans

When developing any type of school finance model, two major dimensions are essential. The allocation dimension and the revenue dimension. The allocation dimension includes target population to be served as previously discussed. Also included in this dimension are the programs, services, and facilities provided for the target population; the computation of unit costs for the programs to be financed; and the requirements and restraints placed on funds.

The revenue dimension includes the percent of revenues to be provided from each of the following: federal, state, and local; the types of taxes; at what level various taxes will be levied; and whether taxes are progressive or regressive.

When looking at alternative school finance models, one finds that they are infinite in number. This can be readily ascertained by looking at the present financing of schools in the United States. By using several broad financial classifications, one can compose a few highly flexible models. Usually these classifications only include state and local sources but for this paper Federal sources will be included. Usually Federal funds are only used in a supplementary manner and, therefore, have reduced import.

As pointed out, school finance models have two major dimensions. These are allocation and revenue.

The Allocation Dimension

The allocation dimension may be divided into two areas: (1) Flat Grant Models and (2) Equalization Models.

1. Flat Grant Models. This model allocates funds without taking

into consideration the variation in wealth among districts. The flat grant has two major areas.

a. A uniform amount distributed per teacher, per pupil, per classroom, or some other unit. This is distributed without taking into consideration variations in unit cost of different educational programs or services.

b. Variable amounts per unit of need are allocated which reflect necessary variation in unit cost.

2. Equalization Models. Funds are allocated according to wealth. In other words, the poorer districts get more money than the richer. If the money were allocated per pupil, pupils in poorer districts would receive more funds from the state than districts of great wealth. The equalization model has two variations similar to the flat grant model.

   a. In compiling the cost, a uniform amount is allowed per pupil, per teacher, or other unit taking into consideration variations in unit cost of different educational programs and services.

   b. Variable amounts per unit are allocated such as per teacher, per pupil, taking into consideration not only the wealth factor but also variations in unit costs according to need.

The Revenue Dimension

The following are the principal types of school finance models classified according to the revenue dimension:

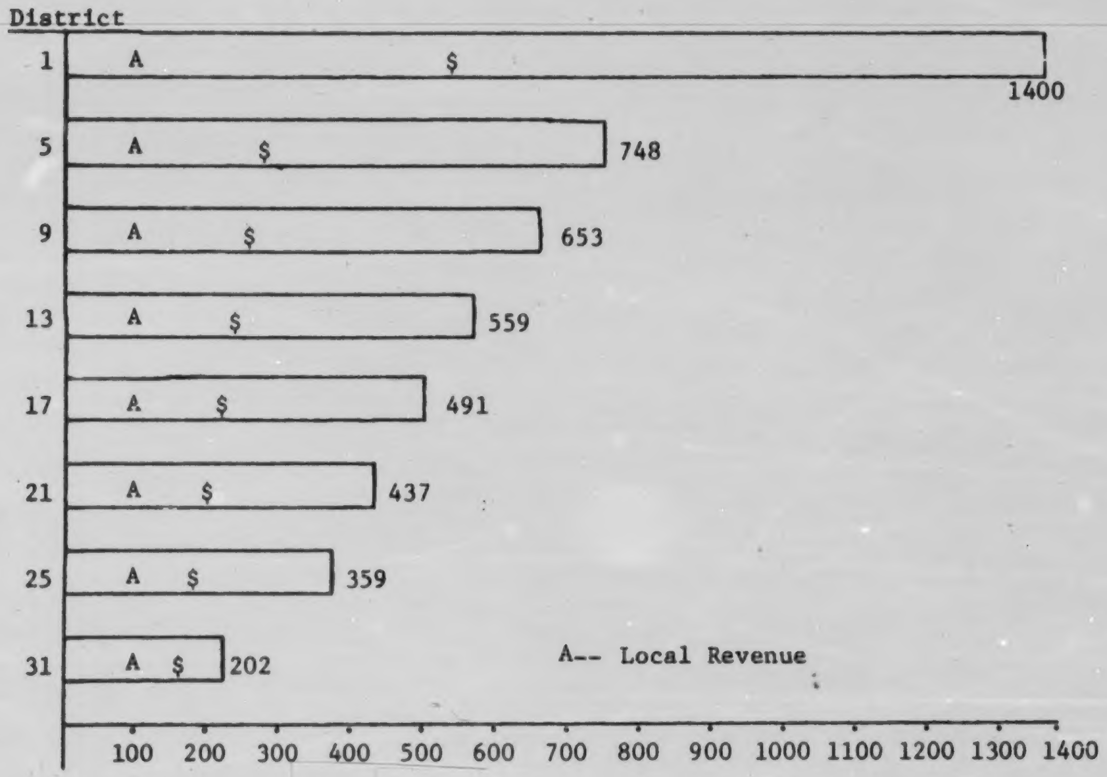
1. Complete Local Support Model
2. Complete State Support Model
3. Complete Federal Support Model
4. Joint State-Local Support Model
5. Joint State-Federal Support Model
6. Joint Federal-Local Support Model
7. Joint Federal-State-Local Support Model

Finance Models

Different models may be designed by adjusting the state, local or Federal revenue and then adjusting the allocation of funds. One basic assumption has been made for this paper and that is that Federal funds will be available in general blockgrants rather than categorical aid. Therefore, these funds will be considered in the same perspective as state funds.

I. Complete Local Support Model

This is based on the local taxing ability. Because of the total dependence on local tax evaluation there will be unequal educational opportunity. A wealthy district will have considerably more money per pupil than a poor district.

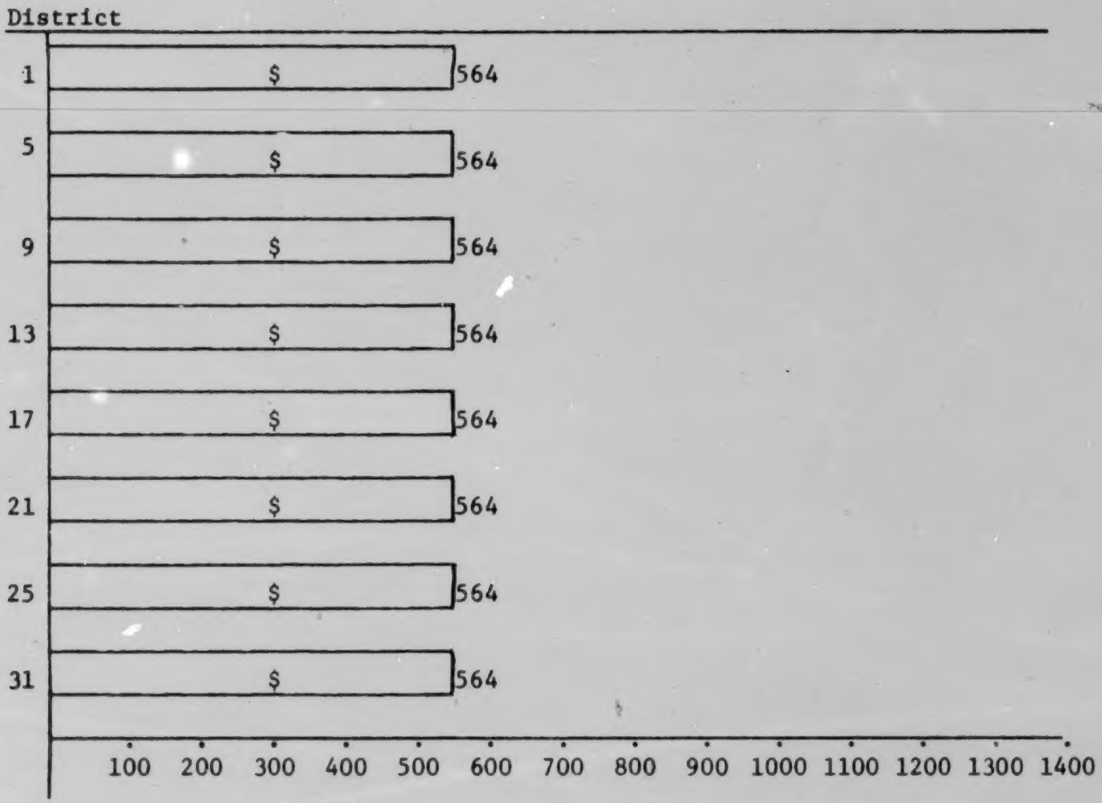


This model provides no fiscal equalization. Full local financing would not be feasible because of lack of equalization and a lack of local tax paying ability of Indian districts.

II. Flat Grant Model

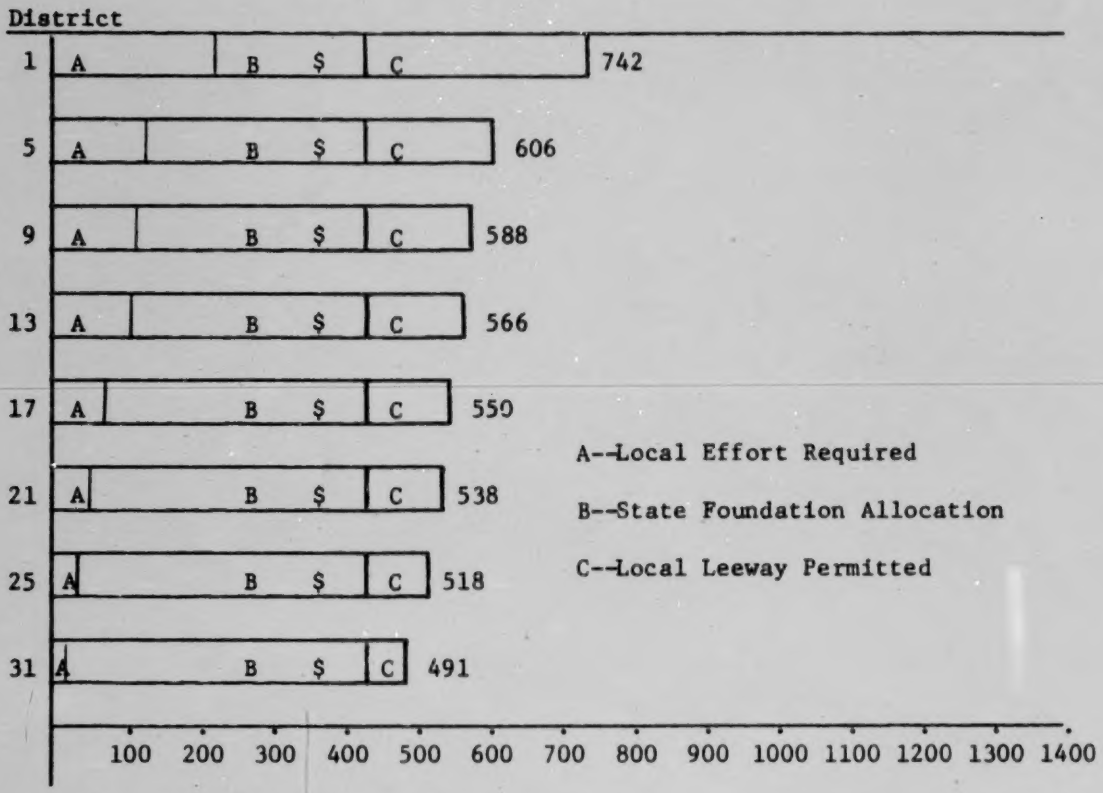
There are several variations when exploring possible systems using flat grants.

A. This is a basic state (Federal) grant to each district based on the number of students without taking into account local tax paying ability. Also, no local effort is required, cost differentials are not considered and the flat grant constitutes the entire educational expenditure.



would constitute the required local effort plus state (Federal) allotment. The big drawback of such a program is that the basic guarantee is usually a minimum program. Therefore, the leeway is sizeable for rich districts and very small for the poorer.

The equalization depends on the required local effort and the amount of leeway permitted.

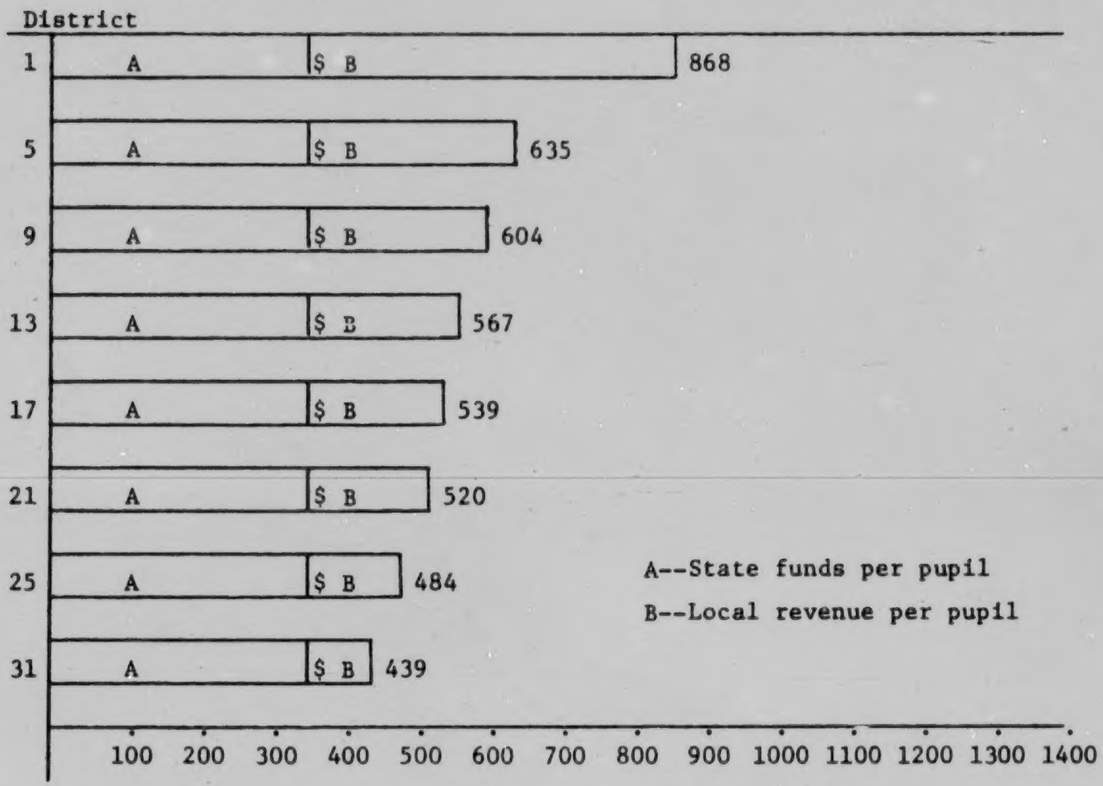


B. With Minimal local leeway

This model has greater equalization than model III-A because it has less local leeway. Because of less local leeway, the disparities among districts are less.

You have some equalization because of a redistribution of wealth but educational needs of pupils are not considered.

B. This is a flat grant from the state (Federal) of $352 per pupil with each local district being allowed to raise 10 mills from the local tax base.

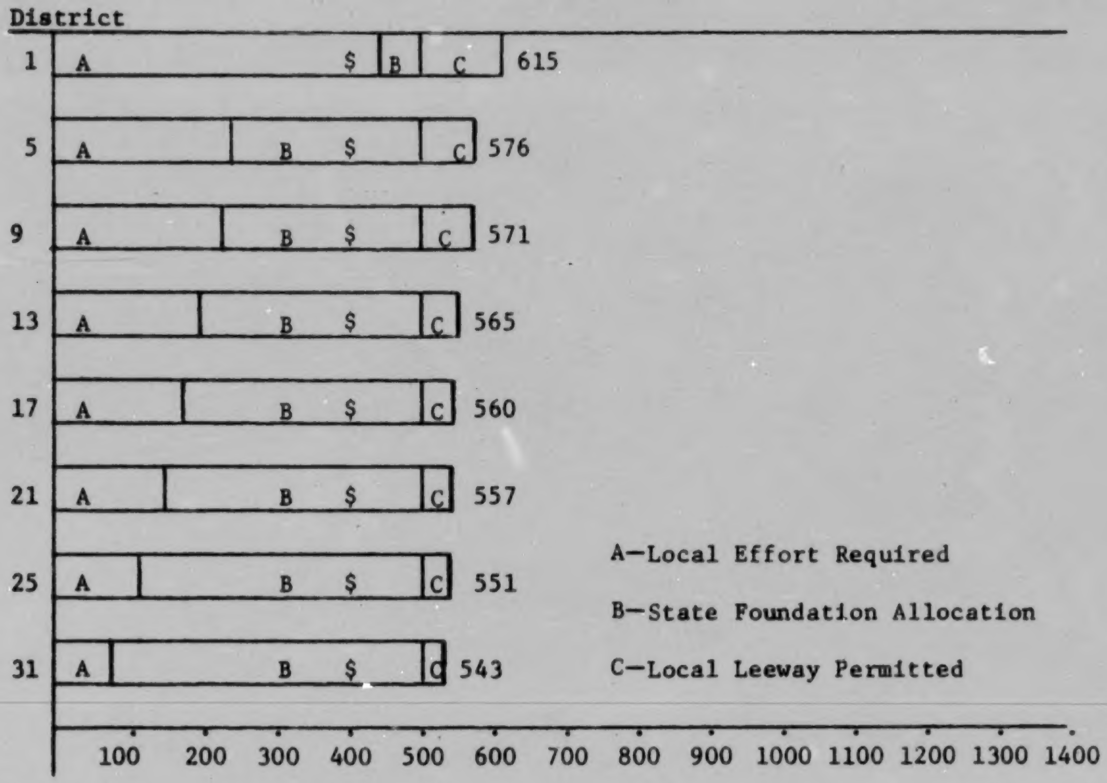


This model still allows wealthier districts to have more money per pupil and does not consider cost differences for variations in educational programs.

III. Equalization Models

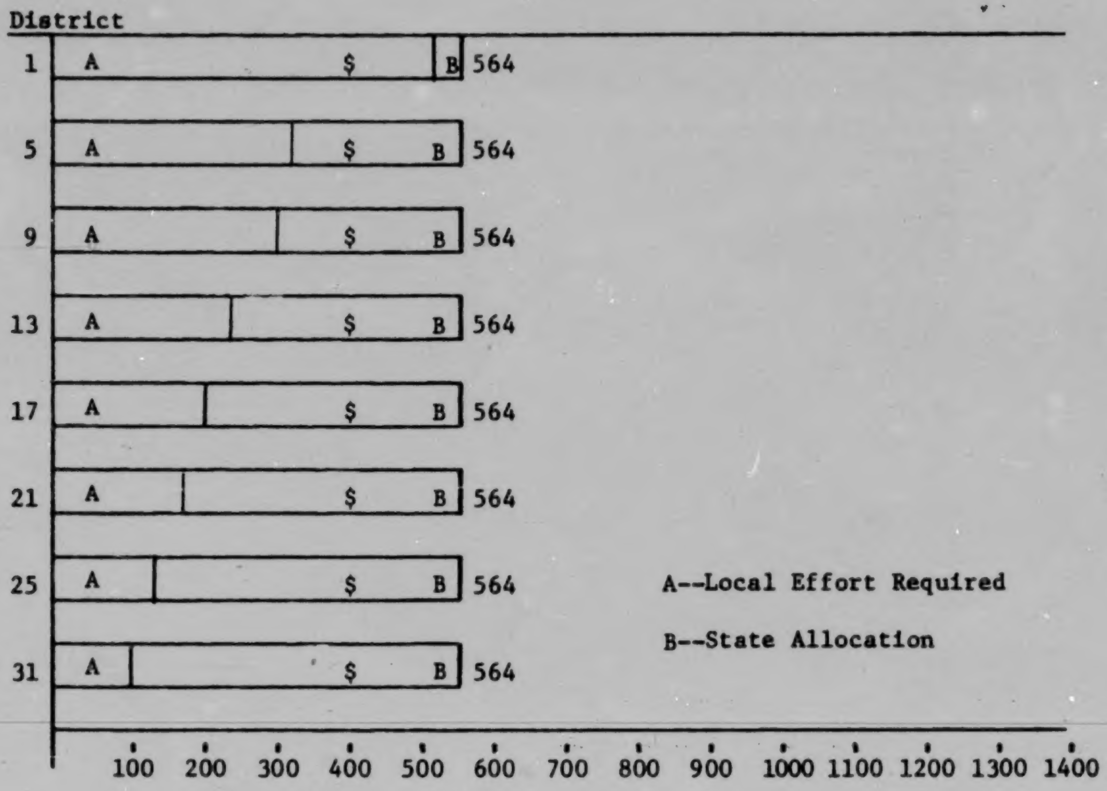
A. With Substandard Local Leeway

This is the old foundation program method used for apportioning state school funds. Basically, this is the old Streyer-Haig formula where a district is guaranteed a minimum program. This minimum program



C. With No Local Leeway

This model provides complete equalization among districts. This would assure all youngsters equal resources for education.

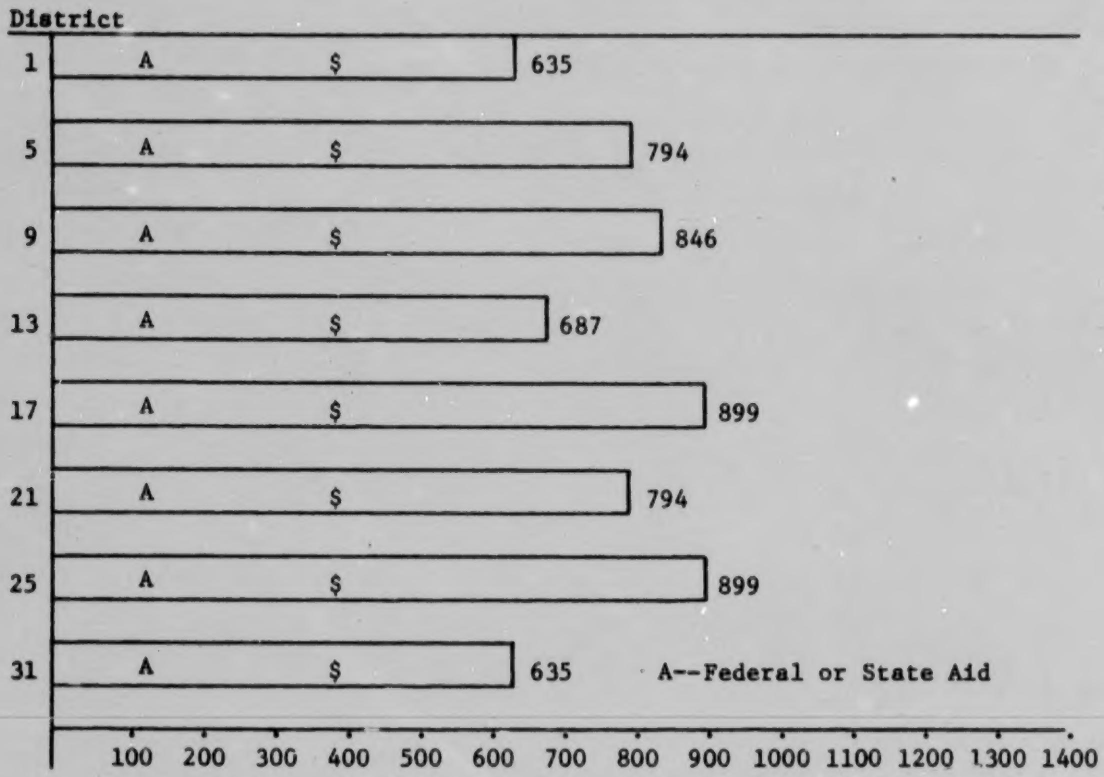


IV. Full State (Federal) Support

This would provide the same level of financing as the "equalization model--with no leeway." This would provide complete equalization and be equivalent to the Hawaii plan.

V. Full Support (State or Federal)

This model would perhaps be the most feasible. It would incorporate cost differential for children with different educational needs yet would not make the education of the child a function of the wealth of the local district. It would require no local effort.



The reason that it appears that some districts get more money per pupil is because of the cost differentials. Some districts might have a higher incidence of educationally disadvantaged or deprived children; therefore, when these high cost programs are averaged, you would have a high per pupil expenditure. Also, a district might have more secondary students or greater emphasis on vocational education so it would have higher average per pupil expenditures. But each child would be getting the type of education program that met his or her needs.

These are only a few of an infinite number of models that could be feasible. Whatever model is developed the decision maker must take into consideration sources of revenue, equalization, educational needs of the students and many other factors. When all of these are considered, hopefully a final program can be developed to meet the needs of all children.

Other Variables That Influence Models

Consideration should be given to a variety of factors that influence educational costs.

1. Costs of transportation vary greatly according to geographic condition, also density of student population, and other factors.
2. Cost of living difference among districts. This could drastically affect instructional costs.
3. Different cost in food services among districts.
4. Construction cost between different locals and the different needs of target populations.
5. Incentives that might be needed to obtain quality instructional personnel.

RECOMMENDATIONS

This paper was not intended to make an in-depth study of the financing structure of Indian schools. However, in the course of developing the paper, it appeared that very few studies have been done on financing separate or alternative schools for Indians. Therefore, it is recommended that the following studies be conducted before a new educational structure is developed:

1. A study be conducted to establish educational goals and objectives. The goals and objectives should be developed for different target populations of pupils.
2. A study should be conducted to identify the educational program needed for different target populations.
3. A study determining cost differentials for all target populations.
4. A study should be conducted to analyze all possible means of producing revenues for separate Indian schools. The study would look at all major and minor tax sources that might be utilized and the degree of productivity of each.

APPENDIX A

SUMMARY OF FEDERAL LEGISLATION AFFECTING EDUCATION

1777 TO 1968

Following is a chronological summary of the principal Federal legislation affecting education from 1777 to 1968:

1777	Initiation of direct administration of education programs--the instruction of military personnel, including schooling in mathematics.
1785	Commencement of aid to territories for education by endowment of schools with public lands.
1787	Commencement of endowment of public institutions of higher education with public lands--Northwest Ordinance: "Schools and the means of education shall forever be encouraged."
1802	Establishment of the first Federal institution of higher education--Military Academy at West Point.
1804	District of Columbia--Federal provision for education begins.
1862	The First Morrill Act--initiated Federal policy of aid to states for agricultural and industrial education through land grants for colleges.
1867	Federal Department of Education established by Congress; later the Office of Education.
1874	Introduction of the principle of Federal-state matching of funds for education.
1887	Hatch Act--encouraged scientific investigation in agriculture.
1890	The Second Morrill Act--introduction of Federal grants of money for college instruction in specified areas of learning.
1914	Smith-Lever Act--matching of funds for agricultural and home economics instruction.
1917	The Smith-Hughes Act--began policy of promoting vocational education below college level through assistance with teachers' salaries.
1918	Rehabilitation training for disabled veterans.
1919	Federal surplus property available to educational institutions.

1920	The National Defense Act of 1920--direct relationship between the Federal government and educational institutions.
1920	Smith-Bankhead Act--Federal-state cooperation in vocational rehabilitation; education for people disabled in industry.
1933	Federal Emergency Relief Administration--supported educational programs.
1933	Civilian Conservation Corps--provided vocational education.
1935	National Youth Administration--employment for college students.
1935	Bankhead-Jones Act--increased support for land-grant colleges.
1936	Promotion of Inter-American Cultural Relations Convention--international educational exchanges.
1936	George-Deen Act--extended the Smith-Hughes Act.
1937	National Cancer Institute Act--provided fellowship grants.
1941	Lanham Act--provided educational assistance for schools in communities affected by the Federal government's activities.
1943	Vocational Rehabilitation Act--aid for disabled veterans.
1944	The Servicemen's Readjustment Act--G.I. Bill, educational aid for veterans.
1944	Surplus Property Act--government surplus given to educational institutions.
1946	National School Lunch--gave funds and food to public and non-public schools; school milk program added in 1954.
1948	Smith-Mundt Act--program of international educational exchanges.
1949	Federal Property and Administrative Services Act--surplus property disposal for educational, health, and civil defense purposes.
1950	The National Science Foundation Act--promoted progress in science through scholarships and fellowships in fields of science.
1950	The Housing Act--low interest rates for loans to institutions of higher learning for building of housing facilities.
1950	Federal Impact Laws (P.L. 815 and P.L. 874)--extended the Lanham Act of 1941; provided assistance to communities affected by activities of the Federal government for construction and operation of schools.
1952	National Science Foundation--fellowship program.

1954 Cooperative Research Act--authorized the Office of Education to conduct cooperative research with colleges, universities, and state educational agencies.

1956 Library Services Act--grants for improvement of library facilities.

1958 United States and Union of Soviet Socialist Republics agree to exchange study groups in educational and cultural fields.

1958 The National Defense Education Act--provided for graduate fellowships in science, mathematics, foreign languages, counseling and guidance, educational technology.

1958 Fogarty-McGovern Act--Federal grants to train teachers of mentally retarded children.

1961 Area Redevelopment Act--training of persons in redevelopment areas.

1961 Peace Corps Act--supplied teachers and technicians to underdeveloped nations.

1961 Juvenile Delinquency and Youth Offenses Control--study of problem.

1962 Manpower Development and Training Act--up-to-date training for the unemployable.

1963 Health Professions Educational Assistance Act--construction of facilities and student loans.

1963 Mental Retardation Facilities and Community Mental Health Centers Construction Act--training of teachers and demonstration projects.

1963 Higher Education Facilities Act of 1963--grants to all colleges, public and private, for improvement of facilities.

1963 Amendments to the Manpower Development and Training Act--expansion of provisions of law, 1962.

1963 Vocational Education Act of 1963--construction of vocational schools with expanded offerings; extended Impact Laws (1950) and NDEA (1958).

1964 The Civil Rights Act of 1964--desegregation of the schools enforced and assisted.

1964 Juvenile Delinquency and Youth Offenses Control Act Amendment--new programs and special studies.

1964 Economic Opportunity Act of 1964--war on poverty through retraining and remedial education and other opportunities.

1964	Amendments to National Defense Education Act--extended and expanded to include areas of English, reading, history, and geography.
1965	Elementary and Secondary Education Act--federal grants to states for allocation to school districts with low income families.
1965	National Foundation for the Arts and Humanities--foundation to support humanities and the arts through grants.
1965	Higher Education Act of 1965--aid to colleges, students, and teachers.
1966	International Education Act--to provide a strengthening of American educational resources for international studies and research.
1967	Education Professions Development Act--to coordinate, broaden and strengthen programs for the training and the improvement of educational personnel.
1968	Vocational Educational Amendments of 1968--redirect, reorganize and expand vocational education.
1968	Higher Education Amendments of 1968--extended and improved four major education acts and authorized six new programs.
1968	Handicapped Children's Assistance Act--Federal effort to help handicapped children at pre-school level.

Source: The National Educational Finance Project, Gainesville, Fla., 1968.

Footnotes

1. Johns, R. L., Alexander, K., Stollar, D. H., (ed) *Status and Impact of Educational Finance Programs*. National Educational Finance Project, Gainesville, Florida, 1971, p. 1.

2. Johns, R. L., Alexander, K., Jordan, K. F., (ed) *Financing Education: Fiscal and Legal Alternatives*, Charles Morrill Co., Columbis, Ohio, 1972, p. 28

3. Johns, Alexander, Stollar, *op.cit.*, p. 2.

4. *Ibid.*, p. 3-4.

5. Johns, R. L., Morphet, E. L., *Planning School Finance Programs--A Study Guide*, National Educational Finance Project, Gainesville, Florida, 1972, pp. 4-5.

ED113089

FEDERAL FINANCING OF INDIAN EDUCATION

by

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The story of Federal monies for Indian education is a study in ironies in which substantial amounts of money are disbursed under so many authorities that no one can identify them or even make certain that they are being spent correctly. It is also a story of substantial sadness since no one connected with the enterprise can refute its essential failure.

In fiscal terms, Indian education is more "Indian bureauracy" than "education." The great bulk of Federal financing comes from, or is routed through, the Interior Department's Bureau of the Office of Education. This situation stems from the time when all Federal responsibility for Indians was given to the BIA, and the Federal government gave little money for anyone's education (White or Native). Today, however, there is a different picture. Passage of the

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Elementary and Secondary Education Act of 1965 (ESEA) and the National Defense Education Act (NDEA) have brought increased Federal financial assistance for the education of America's children.

In the field of education, passage of the Indian Education Act of 1972 (Title IV) which authorized the National Advisory Council on Indian Education (NAC), the USOE Office of Indian Education and the post of USOE Deputy Commissioner for Indian Education has signaled the emergence of a new locus of governmental responsibility for Indian education. The appointment of the first Deputy Commissioner is expected any day and the Indian Self-Determination and Educational Reform Act (S. 1017) now pending may soon become law. This convergence of factors could make 1974 a pivotal year for Indian education. But the beginning of a new effectiveness and a coordinated funding strategy must rest upon a basic understanding of present Federal revenue sources and of the impediments to their efficient operation.

This paper is devoted to aiding the understanding of policymakers in the executive branch who are charged with operating these programs. It should also be useful to the NAC, the Indian community at large and members of Congress who are interested in making Indian education programs work. It is addressed in particular to the new USOE Deputy Commissioner as an orientation to the problems he will face. The narrative falls into three parts. The first describes the present sources (and distribution) of the major Federal programs which support Indian education. The second explains that these programs are not operating as they were envisioned because of a massive failure, sometimes deliberate, to enforce the laws and regulations which govern the programs. The final portion suggests steps that may be taken to end governmental lawlessness and establish accountability from top to bottom particularly at the community level. More programs are not needed. Instead, new mechanisms must be developed to enforce existing requirements and insure that the available monies are spent as Congress intended. Primarily, development of these mechanisms are the responsibility of the executive branch for it is there that a heavy responsibility for past malfunctioning rests. And it is there and at the community level that new hope for the future must be found.

I. The Present Picture: Principal Programs

Although Federal education funds which benefit Indians may flow through as many as 41 different programs, the great bulk of the monies (approximately 80%) are disbursed under four major programs:[1]

(1) BIA Federal Schools (FY 73)	137,000,000
(2) Title IV (FY 74)	40,000,000
(3) Title I (ESEA)	27,000,000
(4) Johnson-O'Malley (Department of Int.)	23,000,000
Total	$227,000,000[2]

As this listing indicates, BIA Federal schools operated under the Snyder Act consume as much Federal Indian education money as all the other programs combined especially when the $12 million of USOE Title I money set aside for BIA use[3] is combined with the basic $137 million BIA appropriation. Even without adding the Bureau's Johnson-O'Malley and higher education monies ($20 million) to this total, it is apparent that the BIA, rather than USOE, is the chief source of Federal monies for Indian education. In addition to the Bureau's traditional role as the administrator of government programs for Indians, the BIA has assumed full financial responsibility for the 52,591 Indian students enrolled in its Federal schools (20% of all Indian school age students),[4] while USOE shares financial responsibility with state and local school officials for the 197,245 Indian students (74% of all school age Indian children) who attend regular public schools. The remaining 7% (18,323) attend private schools.

The first section of this report describes the four programs which constitute the bulk of Federal assistance for Indian education including the Federal statutes and regulations which govern the distribution of the funds and an analysis of how the funds are distributed. This section also describes the conglomerate of miscellaneous Federal programs which provide and additional $15 million for Indian education. But because three-quarters of all Native American school children attend regular public schools and because most Federal funds for their education are provided through USOE, the report begins with a description of their operation.

A. Title IV (The Indian Education Act of 1972)

The largest and most important Federal education program to assist Indian children enrolled in public schools is also the newest. Its three parts (A, B, & C) were created by the Indian Education Act of 1972 -- the same act which created the NAC and the post of Deputy Commissioner for Indian Education. Because it has been in effect such a short time[5] very little can be reported about its actual operations. The heart of the Act (Part A) provides Federal grants to every public school district that enrolls ten or more Indian children.[6] The amount of a district's grant is a fixed percent (uniform nationally)[7] of its state's average per pupil expenditure for each student of one-fourth or more Indian blood that it enrolls. In the 1973 fiscal year, $11.5 million was disbursed under this part of Title IV and Congressional appropriations for fiscal 1974 were increased to $25 million. This figure amounted last year to an average per pupil grant of approximately $80.

The most important feature of Part A is that programs funded by it must be "specifically designed to meet the special educational needs of Indian children" (Sec. 304), and must supplement "and in no case supplant" funds that would be available for Indian education in the absence of Federal funds.[8] Another important characteristic is the community control requirement: Part A programs must be developed and discussed at public hearings, eventually they must be approved by a Parents' Advisory Council (PAC), at least half of which shall be parents of participating children. The membership shall also include teachers and secondary school students (when it is a secondary program).[9] A third important characteristic is that many grants under the Act are not limited to local public school educational agencies (LEA's) but may also be made to tribes and other Indian controlled groups and institutions.[10]

The states of Alaska, Arizona, New Mexico and Oklahoma were the major financial beneficiaries under Part A; school districts in these states received grants totaling close to $1.5 million per state. School districts in Minnesota, North Carolina and Washington received grants totaling approximately $3/4 million in each state, while districts in Montana, New York, South Dakota and Wisconsin received state totals between $1/4 and $1/2 million. Districts in twenty other states also received assistance, although those state totals were significantly less. Another half million Part A dollars were distributed to ten independent schools located in seven states. These grants ranged in size from $208,000 (Rough Rock Demonstration School) and $132,000 (Rock Point School) to $51,000 (Busby School) to as little as $3,300 (United Tribes Employment Training Center at Bismarck).

This initial distribution reveals an important and potentially disturbing pattern. Initially at least, more than 55% of the Part A monies have flowed to four predominantly rural reservation states which have traditionally garnered the largest portions of Federal Indian education monies. While they contain almost 40% of the American Indian public school population, their overproportion of Part A entitlement funds comes largely at the expense of California, the state with the third largest Indian population which received less than 1% of all Part A funds. Moreover, there is no evidence that any substantial part of the money went to urban Indians who now constitute 38% of the total Indian population.[11] It is conceivable that this first year distribution resulted because districts which had previously received Federal Indian education monies were better able to assemble applications in the short time available. In any event, the distribution of second year Part A funds should be examined closely to insure that programs will be developed to meet the especially acute needs of the growing urban Indian population.

Part B of Title IV under which $5 million was appropriated in fiscal 1973 and $12 million in fiscal 1974 is not an entitlement program like Part A. It is a discretionary program to encourage innovative Indian education demonstration programs, bilingual-bicultural programs and special health nutritional and related services.[12] Part B funds may also be used to train Indian teachers, evaluate programs, and disseminate information about them. As in Part A, grants under Part B may be made to Federally supported schools and to Indian tribes, organizations, and institutions. No group is guaranteed funding under Part B, but the size of the program's grant, once it is approved, is not limited by any formula. Many Part B projects, like Part A projects must be developed with the participation of the tribal community and the parents of the participating children.

Application for funds under all three parts of the Indian Education Act receive the review and evaluation of the National Advisory Council which makes recommendations concerning priorities for funding. The Council's authority is greater in relation to Part B discretionary funding than it is under Part A where the formula predominates. Thus the distribution and the proposed use of funds under Parts B and C is a better indicator of what directions Federal Indian educational funding may take.

In fiscal 1973, fifty-one projects in twenty-one states received $5 million in Part B funds. Programs in Arizona received almost $1 million of this amount; programs in California and New Mexico received more than $1/2 million per state; and programs in Minnesota, Oklahoma, Wisconsin, New York, Colorado and Alaska (in that order) totaled in the $1/4-$1/2 million range per state. Only Oregon, Montana and Massachusetts, among the remaining states had programs which received statewide totals of more than $100,000. This pattern of substantial concentrations of Federal Indian education funds in the western states, apparently to an even greater extent than the Indian populations residing there would warrant, continues the old practices. Substantial grants to programs in some non-western states such as Minnesota, Wisconsin and New York might indicate some concern in developing programs to meet the needs of urban Indians, but a relatively small amount of Part B funds appears to have been allocated for that purpose. Very importantly, a large portion of the Part B monies, well over $3 million, went to Indian groups and tribal councils rather than universities, local school districts or governmental agencies.

Part C of Title IV provides funds for Indian adult education programs. In addition to the operation of basic literacy and high school equivalency programs, the funds may be used for program development, evaluation and dissemination. Part C grants may also be made to Indian tribes, institutions and organizations as well as state and local educational agencies. Programs funded under Part C shall be planned and developed with the participation of the tribe and the individuatls to be served. Ten small grants totaling $1/2 million (more than half of which went to Indian tribes and groups) were made in 1973. Part C funds will total $3 million in fiscal 1974.

B. Title I (Elementary and Secondary Education Act)

The second largest Federal program supporting Indian education within the public school system is Title I of the Elementary and Secondary Education Act of 1965. Title I is not specifically an Indian program, it is designed to assist poor and "educationally disadvantaged" children. Because many Indian children fall into these categories, Title I has become a program through which large amounts of Federal dollars flow to the public school systems to provide compensatory education for the Indian children enrolled there.

Title I funds are distributed to schools on the basis of the number of poor children in attendance.[13] Since so many Indian families have low incomes, virtually all Indian children are eligible for Title I benefits. Once a school's Title I allotment has been determined (on the basis of the percentage of children from low income families) its Title I program is open to students who have been tested and found to be "educationally disadvantaged" -- regardless of financial need. Many Indian children who suffer severe educational disadvantages participate in Title I programs. But many others who are both low income and educationally disadvantaged do not participate because their schools are not designated as Title I "target" schools or because others in their school are more educationally disadvantaged than they.

By law, students enrolled in Title I programs must receive special supplementary services that are above and beyond the normal program offered to non-Title I children (the supplemental requirement). Title I schools must also receive the same level of general support which other similarly-sized schools in the district receive (the comparability requirement).[15] In no case may Title I funds "supplant" local funds, i.e., be used to purchase services which previously were, or otherwise would be, paid out of the district's normal operating budget.

Although many Indian children are not enrolled in Title I programs, USOE estimates that approximately $27 million of the nation's present $1.4 billion annual Title I appropriation is spent on Indian children.[16] More than half of this amount (approximately $15 million) goes to Indian children enrolled in regular public schools, while approximately $12 million is transferred to the BIA for Title I programs within the Bureau's Federal school system.

Because few statistics concerning Indian participation in Title I have been compiled, it is difficult to report the average Indian child's grant and where the funds are going.[17] However, per pupil Title I allotments for all public school students of all races in all states averaged $167 in FY 1972.[18] In comparison, the average Title I grant for each Indian student enrolled in a BIA school was $239.[19]

C. Johnson-O'Malley Act (JOM)

Under the Johnson-O'Malley Act of 1934,[20] the Secretary of the Interior annually disburses approximately $23 million to local school districts for the education of Indian children. Under the regulations issued in 1957 this money flows chiefly to school districts which enroll substantial numbers of Indian children and which have "unmet financial needs . . . related to the presence of large blocks of nontaxable Indian-owned property in the district . . . ."[21] This provision is somewhat similar to the basis on which Federal Impact Aid is provided,[22] and the apparently duplicative purposes (and an ambiguously worded regulation) have made JOM aid the center of a prolonged controversy.

The Bureau's practice has been to grant JOM funds to any applicant district that enrolls substantial numbers of Indian children, alleges unmet needs and says it will use the JOM money for programs for Indian children. Critics of this policy[23] argue that many districts merely assert a need for money and use JOM to keep their taxes low. The critics contend that Congress' intent was that JOM money be used primarily as compensatory aid to meet the special educational needs of Indian children, i.e., to be "supplemental" like Title I rather than basic budget support like Impact Aid.[24] The only exception would be school districts which were already taxing themselves to the limit, had exhausted all other revenue sources and were still so short of funds that they needed to use JOM money for basic operating expenses.

The only Federal court that has considered these conflicting interpretations adopted the critics' rather than the Bureau's view of the law.[25] The BIA did not appeal this decision nor did it change its manual or its policies. Bureau officials argue lamely that Bureau criteria have become legitimate because of their longstanding practice.[26] Other controversies surround the program as well,[27] partly because of the substantial amounts of money involved.

Nationally, JOM grants average $230 per pupil and 5% of the

Indian beneficiaries are located in states where the average per pupil grant is over $300. Nearly 60% of the beneficiaries live in seven states having average grants of less than $160 per pupil and almost 25% live in one state, Oklahoma, where JOM grants average less than $60 per pupil.[28] In fiscal year 1971, approximately 70% of the total JOM appropriation went to pupils who lived in five states (Arizona, Alaska, New Mexico, Oklahoma and South Dakota).[29] Other states receiving substantial grants (in order) were Minnesota, Washington, Montana, Idaho, North Dakota, Wisconsin and Nebraska. Twelve other states received lesser amounts.

D. BIA Federal School System

The largest single block of Federal money for Indian education is the $137 million appropriated annually for the BIA's unique Federal system of 213 schools (77 boarding schools and 136 day schools) which enrolls approximately 62,000 students.[30] The Federal school system is composed of three major parts. The boarding school program which serves approximately 42,000 students at a cost of $95 million annually, is the largest part.[31] The day school program which serves approximtely 19,000 students at an annual cost of $31 million is the second largest. The third component, the smallest but the fastest growing, consist of independent, Indian-controlled schools which are administered directly by tribal groups with funds obtained from the Bureau under contracts. These contract schools, whose enrollment tripled from 700 to more than 2,200 from fiscal 1972 to fiscal 1973, are supported by approximately $4.5 million of Bureau funds each year.[32] In addition to these programs which are oriented primarily to elementary and secondary education the Bureau operates a Higher Education Assistance Program of grants to needy Indian students to enable them to go to college. In fiscal year

1973, 13,500 full year Indian students were expected to be funded, an increase of almost 30% over the 10,600 assisted in fiscal year 1972.[33]

The BIA school system is unusual in that it is run directly by the Federal government through employees who enjoy Federal civil service status. The boarding schools, which include some post-high school instruction in addition to the basic elementary and secondary programs, are designed for Indian children whose home communities lack suitable educational opportunities, who are orphans "or who, for social reasons, must be educated away from their homes."[34] According to the BIA, boarding schools also "provide a home-living program to assist students in making social and cultural changes necessary for successful school adjustments,"[35] but these institutions have themselves long been subject to severe criticisms by Indians and other groups as being rigid, barbaric, inhumane and failing to provide the educational advantages the program promises.[36] Four thousand students who have no public schools in their home communities are housed and live there in order to attend nearby public schools. The day school program is overwhelmingly (95%) elementary and consists of small schools in isolated locations. The contract schools are operated primarily by Indian school boards and tribal cooperatives.

The Bureau also operates a $3 million adult education program which places its major emphasis on basic literacy and preparation for high school equivalency examinations. In fiscal year 1973, more than 8,000 Indian adults participated in BIA-funded classes, 895 High School Equivalency Certificates were reported and the number securing jobs or promotions or entering college or other education programs increased to 619.

One surprising characteristic of the Federal school system is the substantial amount of money involved. In fiscal year 1971, the basic support for BIA schools ($137 million) provided an average of $2,183 per pupil. Discounting the incremental costs associated with boarding students, annual per pupil expenditures for BIA day school instruction amounted to $1,641. While this is a substantial amount compared to the national average per pupil public school expenditure of $743,[37] it is significantly less than the $7,000-$9,000 per student per year that the Job Corps spends on its resident high school education programs.[38] It appears undeniable that some per pupil expenditures above the national average are justified because of the small size of many individual schools, the increased cost of supplies and services which most BIA schools provide.[39] Yet large amounts of this money are undeniably lost because of above-average expenditures on administration.

In the five major states which enroll 80% of all BIA Federal school students, Arizona, New Mexico, Alaska, North and South Dakota, average per pupil expenditures vary only about 50% from $1250 to $2100. What is difficult to understand is the variation between Oklahoma ($2,701 per pupil) and Utah ($1,405 per pupil) which enroll the same number of students in BIA schools.[40]

Fully half of all BIA Federal school students and half of all BIA money for the Federal schools program was in two states - Arizona and New Mexico. More than 10% more of both the enrollment and the appropriations can be accounted for by programs in Alaska. Fully 80% of the enrollment and 85% of all appropriations can be accounted for if one adds the three states of North and South Dakota and Oklahoma.[41] Thus the BIA school system really appears to be a very expensive system concentrated in six states, particularly Arizona and New Mexico.

In addition to the four major programs discussed above, various

Federal departments and agencies provide funds for the education of Indians through a bewildering variety of programs. Most programs are funded by the U.S. Office of Education, some by the BIA, others (now limited) are funded by the Office of Economic Opportunity and still others are operated by the U.S. Department of Labor.

1. Indian-Related Aid

Public Law 81-815, the School Facilities Construction Act, provides a Federal school construction subsidy for school districts which enroll reservation Indians. Enacted the same week as the Federally Impacted Areas Act, it also helps school districts meet expenses tied to Federally connected children. After 1953, when P.L. 815 was amended to bring Indians within its purview (Section 14), the Federal government provided almost $50 million in construction money to districts that enrolled children who lived on Indian lands. Seventy percent of this money went to districts in Arizona and New Mexico and another 15% went to Montana, Oklahoma, Guam and Alaska.[42] Unfortunately no new funds have been appropriated for the construction of schools for Indian pupils since fiscal year 1968 because the Act gives priority to construction in disaster areas, areas of temporary Federal impingement and places with no local tax revenue. Only a small amount of previously obligated 815 money ($1.5 million in fiscal year 1972, two thirds in Arizona) is currently being spent each year.

JOM Peripheral Dormitories. Since 1954, the BIA has operated eight dormitories which serve approximately 2,000 Navajo children who attend nearby public schools. Most of these students are in Arizona, 40% are in New Mexico and 6% are in Utah.[43] The BIA provides dormitory room and board for these pupils as part of its boarding school program funded under the Snyder Act, but special provision is also made for

Johnson-O'Malley monies (approximately $2.1 million in fiscal 1973) to be paid to the nearby public schools for the education of these Peripheral Dormitory students.[44]

2. Miscellaneous USOE Programs

USOE operates a number of discretionary programs which support a broad section of educational endeavors. These range from bilingual-bicultural programs to desegregation assistance, from teacher training to student career opportunities, from library enrichment to Vocational Education Exemplary, and from pre-school Head Start and elementary Follow Through to pre-college Upward Bound. Under most of these programs funding proposals come directly from local applicants and bypass state departments of education.[45] Under USOE programs, Federal monies are parcelled out to state departments of education (usually on a formula mandated at least partially by the legislation) and state program officers receive applications and evaluate and fund them in much the same manner as USOE program officers do. (These programs are "state discretionary"). In still other USOE programs, review and funding authority is shared between USOE and the states. ("Mixed dicretionary" programs.) In almost all of these programs, nationwide program cost figures are readily available but the amount or percentage of funds which are spent on Indian children is largely a matter of guesswork. In many programs, legislative provisions or formal agreements between USOE and the BIA provide for a certain percentage or amount of a program's funds to be set aside for the BIA to spend in the Federal school system. These funds are presumed to be spent on the education of Indian children. In non-BIA programs actual amounts are harder to estimate.[46] The Bureau of Social Science Research estimated the amount of USOE discretionary funds spent on Indian children in fiscal 1971, under fourteen programs, to be approximately $8 million,[47] while the USOE Task Force placed the figure at somewhere over $21 million.[48] The true figure must be somewhere in between, but impossible to discover.[49]

Whatever the exact total, the Indian portions of these programs amount to less than the annual Johnson-O'Malley budget (the smallest of the four programs discussed above.) This low figure does not diminish the importance of these programs to Indian education, especially in communities where the scope and impact of the discretionary programs exceed those of the "big four" Indian education programs. In many communities enrolling Indian children, all of these programs combined presently have little or no effect because they are discretionary and most do not exist in small school districts with large numbers of Indian children. However, many districts do have income from the three largest programs which totals a national average of over $400 per Indian student ($80 Title I, $167 Title I and $160 JOM). The importance of the discretionary programs, at least at present, is secondary in size to the "big four" programs and in innovation to the Indian-oriented experimental programs funded under the Indian Education Act of 1972.

3. OEO Programs

The Office of Economic Opportunity spent an estimated $26 million on Indian education programs in fiscal 1972 but that amount has dwindled to virtually nothing. A number of the early OEO programs made experimental seed money available for special pilot programs, such as the Rough Rock Demonstration School, which are now supported by Title IV (Part A) monies rather than OEO. More importantly, the administration's dismantling of OEO caused other innovative programs to lose their funding in the bureaucratic shuffle. The largest block of OEO monies, for example, went to the Office of Native American Programs within the HEW Office of Human Development. This office has now set tribal development, economic growth and primary needs such as health and housing as its priorities and does not intend to finance any education programs at all.[50] Similarly, the Urban Indian Centers now being operated by the HEW Regional offices will spend a miniscule portion of their budgets on educational programs.[51]

II. Subverting Programs Through Eight Easy Lessons

With so much money available in so many programs, it is difficult to understand the continuing dismal state of Indian education. Yet every report indicated that Indians remain the most educationally disadvantaged of any minority group.[52] The continuing poor standardized test scores returned by Indian students reflects the socio-economic status, non-English background and cultural isolation of many Indian children which says more about the test than the takers and indicates sociological factors that are beyond the school's immediate control. Aside from obvious cultural differences other factors within the educational process that can be changed are responsible for the perpetually shameful state of Indian education.

The situation is not hard to describe: despite substantial amounts of compensatory money and programs an astonishingly small percentage of Indian children are enrolled in any programs at all. And those Indian students who are enrolled all too often find that the programs do little good because of culture and language barriers, ineffective teachers, educational incompetence and the overwhelmingly White orientation of the programs.

USOE's 1970 Survey of Comprehensive Education reported that the most "critical needs" of American Indian pupils were in "the subject matter areas of math, reading, and languages," in short, the basics. Yet the same survey reported that "most American Indian children did not participate in disadvantaged math classes."[53] Less than one-fifth of the Indian students in the Southwest and the Midwest were participants while the participation rate in all regions was "only 2 per cent." Participation in compensatory reading programs was not much better. In the West, Midwest and Southwest about one-quarter of the Indian students participated while the rates in other regions ranged from 2-6%. The lowest participation rate is in compensatory language classes: Eight percent of Indian children participate nationally with only one region (the Midwest having a participation rate above ten percent. More than three-fourths (76%) of all Indian children did not participate in any academic programs for the disadvantaged whatsoever.

When we compare these low participation rates with the amount of funds appropriated we reach the inevitable conclusion that monies are not being spent on the intended recipients. This deduction is not based on abstractions. Several telling exposés, including NAACP's 1971 publication of An Even Chance and various Congressional and GAO audits, have thoroughly documented the existence of large scale misuse of Federal monies appropriated for compensatory Indian education programs. These monies have been spent to provide Musak in Maine, computers in Ohio, band instruments in Arizona, golf sets in South Dakota and an airplane in New Hampshire. That much of the money has been misused is not open to dispute. The how -- and the why -- are more complex questions.

Two reasons -- one malevolent, the other at least arguably humane--

explain why such widespread misappropriation has occurred. The still lingering problem of racial prejudice against Indians (sometimes softened as primary concern for White children) is the first reason. As stark and as stereotyped as it sounds, the fact of educational discrimination against Indian children is undeniable. Sometimes subconsciously, often with rationalizations but always after deliberation, large numbers of school officials make decisions which result in discrimination against Indian children in the allocation of educational resources. Sometimes the rationalization is that the voters will not support a bond issue to build schools on the reservation. Sometimes a superintendent decides he can win job security by building up and making people proud of one model school usually in the most affluent part of the district where there are sure to be no Indians. Sometimes the rationalization is based on a more blatant question: why should we pay still higher taxes to provide schools for Indians who pay no taxes themselves -- and who are really not able to learn much in school anyway? Whatever the guise, the result is the illegal racial discrimination which the Constitution forbids and which numerous Federal courts have condemned. Yet racial discrimination remains as much a fact of life for Indian children today as the more familiar Southern discrimination against Black children.

The second reason why Indian children are cheated out of Federal compensatory education funds to which they are entitled is a misguided reverse prejudice. Local schoolmen feel that all children should be treated equally in school despite differences in background and learning modes. Nothing is really more unequal than treating unequals equally. The result is that all children, White as well as Indian, get "their fair share" of Federal funds -- even if these funds are limited by law to certain children with special needs. This "fair share" view, on the surface, finds a comfortable justification in the American tradition of equal treatment before the law. It is translated into the idea that "we do not discriminate on the basis of race: we use Johnson-O'Malley for everyone -- White as well as Indians."

This view carries double weight in the many school districts serving Indian children particularly where local school revenues are limited and no students receive expensive or quality educations. This rationalization is put most humanely by the school official who ask: Suppose you are responsible for a group of malnourished children and are given enough food to feed one particular third of the group satisfactorily for a year? Do you use the food in the manner intended, or do you feed everyone satisfactorily for awhile, all the time knowing that the kids will start to go hungry again after a few months time? When the question is framed this way, the answer is apparent. It is a conclusion most local schoolmen reach because the larger questions of whether the voters or the state legislature should be solicited for more food is considered to be beyond their control or their resources and energies. Large numbers of Indian children thus lose their compensatory entitlements under the banner of equality when it becomes equality for the children of the dominant power group.

The purpose of this report is to describe activities rather than to speculate concerning motives. Yet the inevitable conclusion is that many public school officials for whatever reasons consistently allocate educational resources in a manner which produces deprivation for Indian children. An appreciation of this fact makes the following description of how this diversion occurs more comprehensible.

1. Backward Budget Building. The general backward budget building process of school resource allocation lies at the heart of much school finance discrimination. Every competent school administrator realizes how casually Federal comparability requirements are enforced and how easy it is to obscure exact allocations in aggregate figures. A school budget is supposed to be made up by first providing students with roughly equivalent basic educational programs. Although individual programs will vary (and some schools, especially secondary schools, may have science-oriented facilities, while others might be more oriented toward the fine arts), most students, by law, should have the same approximate pupil-teacher ratio, same quality facilities and equipment, equivalent library resources and equivalent supporting services such as health aides and counselors.[54] Once the basic operating budget has been determined in a roughly equivalent manner, supplementary compensatory programs should be added where needed to meet the special educational needs of disadvantaged students. Title I, Indian Education Act and JOM monies are intended to provide these supplementary programs.

The sophisticated school adminfstrator can, and frequently does, construct a confidential school budget by reversing the process described above. He first designates certain schools as Title I or Title IV schools, designates their reading programs as compensatory reading and designates those teachers' salaries to be paid from Federal funds. The reading teachers at the other schools are then paid from regular local operating sources, and the budget looks as if the first schools have compensatory Federal programs, although the amount of resources allocated each is nearly identical. The same process can be followed in allocation of monies for compensatory math, teacher's aides, health aides, guidance counselors or the other programs for which the district has elected to use its compensatory monies. Usually some portion of the compensatory money is set aside for a small window dressing program, such as Parental Costs, which is offered only to the target children and which helps maintain the illusion of a range of special supplementary services.

In these circumstances the test of a true compensatory program is whether it is offered generally to other students as well as the designated target groups. A career guidance counselor is not a compensatory program for Indian students if there are the same number of counselors in a similarly-sized non-Indian school. What is part of the regular program for non-Indian students cannot, by definition, be compensatory for Indians.

2. Universal Use Equipment. The second most common subversion of compensatory funds is using them to buy equipment -- projectors, films, recorders, library books, band instruments and wrestling mats (a true example!), the use of which is almost impossible to limit to target children. A school administrator whose school needs some item of equipment labels it as part of the compensatory program, buys it with Federal funds and puts it into the regular equipment room where it can be used by anyone in the school. Arguably, it is a "special, supplementary" piece of equipment if it is used 90% of the time in true compensatory programs and only 10% of the time in "regular" classes. But who is going to monitor such minutia? If the machine is placed in a "target" school, the smart school administrator knows no questions will be asked.

3. Open Enrollment Programs. Variations on Universal Use Equipment are programs which are open to non-target as well as target

children. (Why limit a good program to the disadvantaged?) The Johnson-O'Malley program in Oklahoma is a good example of open enrollment programs. Although the statute and the regulations provide specifically for programs for Indian children of one-fourth or more degree of Indian blood, a 1973 Interior Depratment audit concluded that there were ineligible student participants in every Oklahoma JOM school having special programs. These "ineligibles" were non-Indians, or were of less than one-quarter Indian ancestry.[55] Last year similar non-Indian beneficiaries of JOM monies were discovered in Alaska.

4. Overdrawn Overhead. Another important reason why compensatory education money does not reach students in the classroom is that consistently large amounts are drained away by administrative overhead. The exact amount is usually obscured within bewildering budget line item titles, but in programs such as Title I, the outer limits often constitute the norm. Federal regulations allow each state educational agency (SEA) to employ up to $150,000 of the State's Title I allotment for administrative purposes,[56] and each local educational agency (LEA) may use up to 10% of its grant for overhead. On a national basis more than $7.5 million of Title I money may legally remain with the fifty SEA's and LEA's may claim as much as $100 million for administration. Among Indian Title I funds, losses in classroom funding because of this practice are precisely quantifiable. Under a memorandum of agreement with USOE, the BIA central administrative office is allowed to "be considered as" an SEA for Title I administrative purposes and BIA Area offices may "be considered as" LEA's. As a result, approximately $1.3 million of the $12 million Title I money OE sets aside annually for BIA use in the

Federal school system need never reach the classroom. Another $3 million in Title I monies is diverted from the classroom to LEA's and SEA's outside the Federal school system.

Although the amounts lost to overhead in other programs may not be as easily ascertainable as they are in Title I, they are substantial nonetheless. Especially in the BIA Federal school system the amount spent on administration compared to instructional salaries is large. In fact, there is some evidence that the salaries of large numbers of non-educational personnel in some area offices are paid out of the Bureau's educational budget.

5. Formula Fluctuations. In some programs Federal monies that come into a school district because of Indian enrollments can be diverted away from Indian children lawfully by the manipulation of allocation formulas. Federal Impact Aid which flows into school districts to compensate for lost property tax revenues must be spent equally on all students, non-Indian as well as Indian, as part of the district's general operating budget. Unintentionally, allocations made in other programs produce similar results.

A prime example, again, is Title I. Title I monies are allocated to school districts on the basis of the number of poor children defined chiefly by the U.S. Census. Each district's Title I funds may then be allocated to its "target" schools on the basis of a number of different factors. A district may receive a large Title I allocation because of its enrollment of many Indian children from low-income families, but once the funds reach the district the administrator can distribute them on the basis of various formulas including, for example, the number of children from AFDC families in each school. Because the BIA operates a special welfare program for Indians with

Snyder Act monies, Indians do not normally participate in the Federal-state AFDC welfare program. Thus when the superintendent distributes his Title I money on the basis of AFDC recipients, the funds go to schools attended primarily by non-Indians. Under present law this process meets the formal legal requirements even if the spirit of the law is lost in the shuffle.

6. Parental Non-participation. Such abuses run rampant through Federal education programs for Indian children because the intended checks and balances have been undermined. No effective accountability mechanism exists. Because state and Federal monitors are short-handed and far away, the expenditure of both Title I and Title IV money is required to be overseen by Parental Advisory Councils (PAC). Many school districts have also been required recently to establish JOM Advisory Committees to serve a similar function. Theoretically, these PAC's operate as the people's watchdog, assessing their children's needs, suggesting priorities for the use of the Federal monies, evaluating the work and worth of the programs and above all, looking over the superintendent's shoulders (with complete access to information) to insure that the law is followed. In practice, the PAC's have rarely worked that way.

For several years after the passage of Title I many school superintendents reacted to the committee requirement of the law by simply ignoring it. Parents had no idea what the Federal legislation meant and numerous state and local officials claimed the same ignorance. Federal enforcement officials often claimed they had too many other responsibilities to keep track of whether or not the requirement was being met. As a result, laissez-faire prevailed.

When this official negligence was thrust into the public spotlight, change had to occur but the change, for the most part, remained cosmetic. Indian investigators have described the types of committees that quickly emerged including phantom committees -- names and addresses of people listed on an application form who did not know they were on a committee or that a committee existed. One night stand committees that were called together once to look at and sign an application then never heard from again were created. Rubber stamp committees (parents who owe their jobs as teacher aides to the superintendent and were appointed to the PAC by him to endorse what he did) and self-selected committees (the few who heard about a meeting and remembered to appear for it becoming the committee by default) flourished.

Many other committees have been sadly ineffective, having no knowledge of their own authority, no mastery of the regulations which define the law and no technical background to enable them to understand budget pages and balance sheets. Some committees are sold fancy high-priced educational gadgetry by fast-talking salesmen with slide shows. More often they are handed detailed sixty page program narratives and budget sheets and told that these applications have to be approved that night for submission to Washington the following day. Embarrassed at not understanding the jargon, intimidated by the pages of numbers and inhibited by a traditional deference to education officialdom, many PAC's sign on the dotted line, endorsing the superintendent's product lock, stock and comparability requirement. Thus most PAC's act without really understanding their programs and incapable of playing the active watchdog role hoped for them.

7. State Department Non-enforcement. One step up the authority ladder, these cosmetic applications arrive in state departments of

education which, while understanding their entitlement of the $150,000 Title I administrative overhead fee, find the other regulations too complicated to enforce. Most state departments of education were established to assist local school officials and understand and appreciate the myriad problems and pressures that local educators face and are sympathetic to their situation. SEA officials who have often been recruited from LEA's, share the local's frustration with detailed Federal requirements, the local's concern with providing the best education possible to their best pupils (i.e. Non-Indian), and often the local's unwillingness to go out of their way for Indians.

Officials who are more conscientious, or who truly care, usually lack sufficient staff to investigate local school practices, fail to understand the full scope of their authority or are forced to keep silent in the face of "state political realities." For any and all of these reasons, the SEA which strictly enforces the compensatory education requirements upon its LEA's is a rarity. Instead, in the scattered lawsuits brought to enforce these requirements, SEA's are invariably named as defendent parties and are found to have failed to fulfill their responsibility. For all of these reasons Title IV Act deliberately by-passes SEA's in the application process which runs directly from local administrators to Federal officials. SEA's are informed of the applications but that is the extent of their involvement -- a reflection of their past record in Indian education and a portent of things to come.

8. Federal Laxity. The key factor behind state department nonchalance is the almost total absence of pressure from Federal authorities to act conscientiously. Admittedly many Federal officials are hopelessly understaffed considering the broad responsibilities

thrust upon their shoulders. (The whole Title IV appropriation for fiscal 1973 was entrusted to a half dozen people, most of whom had many other important responsibilities and Title I program officers are each solely responsible for a six or seven state region of the country.) More importantly, Federal enforcement activity sometimes results in pressure from Congressmen whose staffs call executive officials to know why their constituents are being investigated and interfered with. This pressure can often undermine serious enforcement efforts. And finally, Federal officials do not know where to look for violations unless they are alerted by an active PAC. Looking for a needle in a haystack is simply not a valuable use of their time.

Regardless of excuses, the laxity of much of the Federal enforcement effort is simply inexcusable. Sometimes the problem is a matter of personnel with other priorities. The Title I program, for example, is regarded informally as a "Black" program and is administered from Washington primarily by Blacks. Indian interests, although amounting to $27 million, are not something to which much Federal enforcement attention is directed.

More serious is the frequent Federal refusal to take a tough stand when blatant violations are pointed out by angry Indian parents and documented by Federal auditors. An August 1972 Interior Department audit of Johnson-O'Malley funds in Alaska, for example, pinpointed approximately $2 million in Federal funds which were accounted for only by the oral representations of state officials that the money had been spent for the intended purpose. The officials could not document their expenditures with vouchers, receipts or even computer printouts. They argued that the "missing" amounts were only a result of a computer error which occurred during a change in the state's computer system.

This discrepancy appears never to have been fully resolved. Meanwhile, Alaska continues to receive one of the largest JOM allotments in the nation.

Far more heinous is the Interior Department's participation in and defense of illegal uses of funds when its responsibility is to prevent illegalities or end them when they are discovered. The BIA has consistently defended a New Mexico school board's maintenance of a million dollar cash surplus (on a $5 million annual operating budget) despite the fact that the district receives large amounts of JOM monies intended "to accommodate unmet financial needs of school districts."[57] Even after being named as a defendant in a lawsuit, the Bureau stuck to its defense of the district's right to accumulate surplus funds rather than apply its influence to persuade the district to do more for the education of its Indian students -- some of the most educationally disadvantaged of any in the state.

Similarly, the Select Senate Subcommittee on Indian Education protested over four years ago that school districts too often used JOM money "to supplement their general operating budgets rather than to provide for special Indian needs." The Federal District Court for the District of New Mexico ruled in May 1973, that JOM money should normally be used "only to meet the special needs of Indian children." Yet Bureau officials still refused to enforce this policy in Alaska on the grounds that "the agency applying the regulations has chosen to proceed under an equally or more valid construction of interpretation" of the language of the Regulations. More valid than a Federal District Court and the Senate itself?

Nor have USOE's enforcement efforts covered that office with glory. Long after An Even Chance called violations to their attention, USOE officials did little to enforce Title I Regulations in New Mexico until they were named as defendants in a Federal court suit. The widely-touted campaign to make a number of states pay back illegal Title I expenditures has gone by the wayside, not with a bang, but a whimper. A 1971 Title I preliminary audit in Alaska which noted exceptions of almost $4 million appears likely to be resolved with promises to do better -- and perhaps a 2% repayment. And recent angry complaints of USOE officials about funds appropriated under the Indian Education Act being spent on non-Indians produced anything but vigorous action.

With Federal officials setting this kind of example, it is not surprising that school officials, from local districts to SEA's, disregard the law and regulations with impunity. Irresponsibility exists at every level. Accountability can be established only by resurrecting integrity and monitoring at all levels of responsibility.

III. Is There Light At The End Of This Tunnel?

Although the delivery system for Federal Indian education funds is beset with leakage, steps could be taken to dispel the present climate of rampant abuse. The chief ingredient now lacking is will. Hopefully, the arrival of the new USOE Deputy Commissioner for Indian Education and the new BIA Commissioner will supply that element. Because this report is addressed chiefly to the former, it suggests steps which should be within his authority. To the extent they are not within his authority, he should make it his priority to see them achieved. Without accountability, he and his associates will never be able to perform the role the Indian Education Act provides for them.

Accountability must be built within USOE itself. Title I and Title IV must be brought under control before concern with a multitude of discretionary programs dissipates energy. A first step toward curbing Indian Title I abuse is to get some Indian personnel into the administration of the program. No Black or Mexican-American can achieve the affinity with Indian people that is necessary for the program officers to become the trusted recipient of reports from the myriad of local community eyes and ears.

Second, and equally critical, it is imperative that the new Deputy Commissioner assemble a staff which will insist that the SEA's do their jobs. USOE should reopen the question of what SEA's can be required to do with the $150,000 each receives for Title I administrative overhead. Substantial ESEA monies are also available for strengthening SEA's and means should be explored to insure that state and Federal program officers know the requirements of the laws, understand their responsibility to enforce them and know the data sources from which evidence of compliance can be obtained.

The Deputy Commissioner should also charge Title I and Title IV officers with double checking items such as comparability reports (even if only on a spot check basis) and assuring state officials that certification of comparability and participation reports are necessary prerequisites to the receipt of Federal funds. It is difficult to see how Washington officials can discharge these duties fully without getting out to meet state and local officials and view and monitor some of the programs first hand. This kind of energy is necessary to full and effective Title I enforcement.

USOE officials must also reform the present "hands off" relationship with the BIA. Each department must take a more mature, responsible, professional view that recognized each one's responsibility to Congress for the funds Congress gives it. The Memorandum of Understanding with the BIA concerning the $12 million Title I set-aside for programs in in the Federal schools must be renegotiated to provide for regular auditing and a full accounting of the money each year. It would even be appropriate for USOE to bar any further Title I funds for the BIA until such time as the BIA demonstrated financial accountability and meaningful parental advisory councils. If the protocol problems of one executive agency meddling too much in the affairs of a coequal sister bureau are too great to overcome, perhaps the role of the National Advisory Council on Indian Education could be expanded with additional staff to include more active involvement in the evaluation and improvement of BIA educational programs.[58] Whatever the mechanism, the BIA must account for its money like any other organization.

In the long run, however, insuring that Indian children receive their fair share of Federal compensatory education funds is too important to be left to administrators who are subject to myriad pressures including the exigencies of the political and appropriations processes. Two sources of reliable outside assistance are apparent. The first is the National Advisory Council on Indian Education. Still in its infancy, the NAC could become a potent political force which could be the Deputy Commissioner's valued ally, as well as trusted representative advisor. The statute which created the NAC gave it broad authority to evaluate all HEW Indian education programs and to participate in the development of criteria and regulations for the administration and evaluation of grants.[59] The Council is authorized to contract for assistance in fulfilling these tasks and to make independent recommendations to Congress.[60] As a partner in enforcement with the Deputy

Commissioner, the NAC could become a political counterweight to the occasional Congressional pressure and perhaps act as a watchdog group which could locate local abuses and help key the Deputy Commissioner's staff efforts to the most egregious ones.

A second source of outside assistance may be more important yet. These are the beleagured, maligned but potentially powerful Parent Advisory Councils (PAC's). These PAC's hold the key to successful long-run enforcement. The first eight years of Title I taught much about how not to operate PAC's. Some Congressional requirements for Title IV PAC's could rescue them from the recklessness which plagued their Title I predecessors. The Title IV PAC requirements of representation and participation in decision-making are far more stringent than Title I PAC requirements are even today and may suggest a means for building in enforceable accountability at the local level, the place where it can have real meaning.

The plethora of PAC's (Title I, Title IV and JOM) should be consolidated into one larger, more powerful body to serve as a constant community counterweight to the local administrator. These new PAC's should retain the authority and representivity of Title IV PAC's, but should have new regulations to give them greater power. One rule could require that a certain portion (perhaps 4%) of each district's Federal funds be given to the PAC for its operations.[61] This money could be used to provide technical training for all PAC members similar to that presently provided to some of the Educational Leadership Training, Inc. in Albuquerque. This training is a prerequisite to effective PAC operation. Understanding the statute's purposes, the PAC's authority and how to deal with budget sheets is required for the effective exercise of even a minor supervisory role.

PAC funds could also be used to sustain technical staff assistance. One trained staff member -- even part-time -- can get more information in a day than most PAC's can ferret out in months. The fact that (s)he is trained, paid and always present might be enough in itself to prevent many of the most blatant abuses. That the staff person be selected, paid and be answerable directly to the PAC rather than the superintendent is of critical importance. Only on the local level, on a day-to-day basis can a real watchdog role be effectively played.

Cries of "Federal interference" and "this wastes money that should be spent in the classroom" can be expected. But the lesson of the past decade of Federal compensatory education is that local accountability is the minimum prerequisite for avoiding massive abuse. Real waste comes when Federal dollars are doled out with less than stringent safeguards. Given the financial squeeze on local school officials, it is inevitable that they will spend Federal monies or their own priorities unless they are compelled to use it in the required manner. Neither Federal officials nor state education departments have demonstrated the will or muscle to keep local school districts in compliance. Strengthened staff-supported super-PAC's may well be the real answer to the accountability problem that has thus far eluded us.

Establishing super PAC's will not, however, be a complete panacea. The lack of school board expertise, particularly in rural areas, has long hindered effective citizen control (White or Indian) of the public schools and Indian PAC's cannot expect to be immune to the widespread malaise. A number of hopeful signs give promise that this proposal could work. The Coalition of Indian Controlled School Boards (CICSB) represents a vital new force in Indian education. Its members and staff have helped prepare a number of Indian communities to take over the many complex tasks of school operation and none of its schools, once under Indian control, have yet returned to BIA operation. The Indian corporation, Educational Leadership Training, has also developed a series of training programs which have demonstrated their value and workability. The grass-roots movement, despite its difficulties, is working well and is totally consistent with the present Federal policy of allowing power to flow from Washington back to the tribes. Successful precedent exists and it can spread from community to community and tribe to tribe if Indian people can continue to learn from each other's experiences.

Footnotes

1. Many reports include a fifth large program known as Impact Aid, SAFA (School Assistance to Federally Affected Areas), or P.L. 874 which provides substantial amounts of Federal dollars ($26.5 million) to public school districts that enroll Indian children. Impact Aid is general budget support given to districts which lose property tax revenue because of nontaxable Indian reservations within boundaries.

2. These figures come primarily from page 6 of a USOE Indian Education Task Force report entitled "An Issue Paper and Recommendations," which was completed in early 1972. Statistics and other information incorporated from that report into this paper will be cited as USOE Task Force Report. The remaining 20% (approximately $58 million) comes from Impact Aid ($28 million) OE discretionary programs ($15 million), Labor Department programs ($6.2 million), and the Office of Child Development (possibly $8.8 million), a grand total of approximately $285 million.

3. This set aside is executed pursuant to a formal Memorandum of Agreement between the U.S. Commissioner of Education and the Commissioner of Indian Affairs which was in the process of renegotiation in December 1973.

4. 1970 Census. Quoted in Between Two Milestones, November 1972, the first report of the Special Education Subcommittee of the National Council on Indian Opportunity, page 53.

5. Programs and disbursements under the Act got off to a slow start because the Nixon administration refused to implement the Act and asked Congress to withdraw the funds. When Congress refused, the administration impounded the funds and the President refused to appoint the National Advisory Council. To free this money eight Indian groups and tribes filed suit against HEW officials and the President in January 1973. On March 30, 1973, the Court ordered a crash schedule for the disbursal of funds under the Act before the June 30 end of the fiscal year.

6. P.L. 92-318, Sec. 303(a) (2)(B), June 23, 1973. Certain exceptions also allow additional LEA's to apply.

7. Sec. 303(a)(2)(A) and 307 (a).

8. Sec. 305(a)(5).

9. Sec. 305(b)(2)(b).

10. Secs. 303(B), 310(b), (c) and (e) and 314(a) and (b).

11. USOE Task Force Report, page 3 and Appendix A4, page xxiii.

12. Sec. 810(b).

13. Title I funds are channeled through the states to districts based on a formula which defines eligible pupils as children from families whose income is less than $2,000 (1970 Census), plus children from families which receive more than $2,000 per year from ADC payments, plus neglected or delinquent children in local institutions and foster homes. 45 C.F.R. 116.3(a). Each district's funds are then concentrated in the district's "target" schools which enroll the largest percentages of children of low income families, as defined by any one of a number of criteria. These criteria include census data, AFDC recipients, overcrowded housing, free lunch recipients and concentrations of unemployment. USOE, Title I ESEA - Selecting Target Areas, Handbook for Local Title I Officials, pp. 4, 7, 10 and 12.

14. USOE data for 1970 suggest that about a third of all public school Indian pupils attended schools not designated by their districts for Title I assistance. This estimate comes from a May 1973 report published by the Legal Action Support Project of the Bureau of Social Science Research (BSSR) entitled "Federal Funding of Indian Education: A Bureaucratic Enigma," which is the result of extensive data gathering and interviewing of Federal officials. This reference is on page 53, footnote 17. (Further references to this report will be cited as BSSR Report.

15. Sec. 45CFR 116.26.

16. BSSR Report, page 34, USOE Task Force Report, page 6.

17. There is also substantial evidence that much Title I money never gets spent on compensatory education at all. See NAACP Defense and Education Fund and the Harvard Center for Law and Education Report, An Even Chance (1971) on Federal funds for Indian children in public school districts.

18. BSSR Report, page 35. Some evidence that the average public school Indian's Title I grant is close to this figure is the fact that the average grant for all children (White, Indian and others combined) is $165 in the 26 states which enroll at least 1,000 Indians in the public schools, or have a BIA school within their borders. BSSR Report, page 54.

19. BSSR Report, page 34. Both of these numbers (and the second one in particular) are the result of the simple calculation of taking the best estimate of the portion of a state's total Title I allotment that is believed to be spent on Indian children and dividing it by the estimated number of children enrolled in the State's "Indian" Title I schools. Needless to say, one estimate divided by another does not produce a hard reliable figure. Nor does this process account for the large amounts of Title I money spent on administering the program, nor the amounts spent on non-Indian children in "Indian" Title I schools, nor the amounts which are not spent on special compensatory programs at all. The quoted per pupil is anything

but a hard figure and is presented only to provide an approximation of how much Title I money could be available for compensatory education if the funding was channeled to the classroom to benefit the child.

20. 25 U.S.C. 452, with implementing regulations at 25 C.F.R., Part 33.

21. 25 C.F.R. 33.4(b).

22. Impact Aid is designed to help districts finance the education of students connected with nearby Federal land or installations (including military bases and National parks, as well as reservations). Because these Federal areas are exempt from local property taxes, Impact Aid compensates the district for the property tax income it would otherwise receive. The amount of the district's Federal grant for each pupil is the cost of educating students in "comparable" districts in the state, ratably reduced on the basis of the total Federal appropriation. These funds become part of the district's general operating budget and need not be spent on Indian students or Indian programs, although recipient districts -- like all districts -- must provide Indian children with the same resources it provides non-Indian students. Numerous judicial holdings, in addition to HEW's Title VI guidelines under the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, require that school districts not discriminate against students of any ethnic group in the allocation of Federal resources. See Natonabah v. Board of Education of Gallup-McKinley, 355 F. Supp. 716 (D.N.M. 1973): Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971).

    USOE estimated in fiscal 1971 that $23 million in Impact Aid payments were made because of the presence of Indian children. Per pupil payments varied from $176 in California to $659 in Wyoming with a national average payment per Indian pupil of $267; most Indian students (almost three-fourths) lived in states where payments were $200-$275 per pupil. Seven states: New Mexico, Arizona, Montana, Oklahoma, South Dakota, Washington and Alaska received more than three-fourths of all Indian Impact Air funds. BSSR Report, pp. 98-100.

23. The critics have included the Special Senate Subcommittee on Indian Education, the NAACP Legal Defense and Educational Fund, the National Indian Leadership Training Center and the Harvard Center for Law and Education. See An Even Chance, Rosenfelt, "Indian Schools and Community Control", 25 Stan. L. Rev. 489, 499 (1973). See also, U.S. General Accounting Office, "Administration of Program for Aid to Public School Education of Indian Children Being Improved," (May 1970); U.S. Department of Interior, Office of Survey and Review, Audit Operations, "Audit of BIA JOM Contracts with Oklahoma for Public School Indians," (April 1973) Further references to this audit will be cited as Oklahoma JOM Audit.

24. The Act itself is ambiguous providing only for contracts "for

the education of Indians." 25 U.S.C. 452. The disputed Regulation states that aid under (JOM) will be limited to meeting educational problems under extraordinary, "supplemental or exceptional circumstances." 25 C.F.R. 33.4(c). This regulation was adopted in 1958 when Congress first allowed districts to receive Impact Aid for reservation Indians. The Congressional Committee reported that this made "a significant change in the treatment of school districts educating Indian children" because it enabled them to receive Impact Aid for normal school operations and JOM aid for "special sources and for meeting educational problems under extraordinary or exceptional circumstances." H.R. Rep. 1532..Comm. on Educ. and Lab., 85th Cong. 2d Sess., March 19, 1958. p. 3.

25. Natonabah v. Board of Education of Gallup-McKinley, 355 F. Supp. 716, 726 (D.N.M. 1973).

26. See e.g., Administrative Determination of BIA Juneau Area Director, August 15, 1973, at 5,7 ("where an agency, charged with the implementation of an ambiguous act, consistently interprets it in a particular way over a long perior of time, such interpretation is usually given effect, where it is reasonable."..."Thus, even if petitioner's construction of the regulation was conceded as a possibility, the agency applying the regulation has chosen to proceed under an equally, or more valid construction or interpretation."

27. See pages 33-36 and 38-44; An Even Chance.

28. BSSR Report, page 85. These figures again are rounded estimates subject to the limitations described in footnote 17.

29. BSSR Report, page 87-88. These states which enrolled approximately 70% of the eligible students are listed in order of size of grant; the largest numbers of eligible pupils are in Oklahoma, Arizona, New Mexico, South Dakota and Alaska.

30. BIA Budget Justification, page IA-3, (FY 1974). The BIA also operates two hospitals and 19 dormitories which house approximately 4,000 students.

31. These figures include the cost of maintaining dormitories for approximately 4,000 Indian students who attend normal public schools, rather than the BIA's Federal school system.

32. Statistics from BIA Budget Justification, Education and Welfare Services, Analysis by Activities, page IA-3. These numbers reflect normal operating expenses only and do not include additional monies which the Bureau spends for the planning and construction of new facilities.

33. BIA Budget Justification, page IA-8.

34. BIA Budget Justification, page IA-9.

35. Ibid.

36. See, e.g. Senate Subcommittee Report, Chapter 3, "The Failure of Federal Schools; Special Problems," pp. 67-79. L. Brightman, "Mental Genocide: Some Notes on Federal Boarding Schools for Indians," 7 *Inequality in Education*, 15 (Feb. 1971) (The publication of the Center for Law and Education, Harvard University); *National Indian Youth Council, Intermountain Indian School Chapter v. Bruce*, No. NC 21-71 (D. Utah, decided January 10, 1973) (Complaint dismissed).

37. National Education Association, *Estimates of School Statistics, 1971-1972*, 1971, pp. 10,34,36. Derived from Total Current Expenditures for Public Elementary and Secondary Day Schools Minus Federal Revenue Receipts, divided by the number of pupils in average daily membership. Current expenditures include cost of instructors, administration, operation, maintenance, fixed charges, and other school services at all levels of administration -- state, intermediate and local. It exludes capital outlay and interest on school debt, post-secondary and non-public school education, summer school, and community services.

38. See Senate Subcommittee Report, pages 56-57.

39. See Sar Levitan and Barbara Hetrick, *Big Brother's Indian Programs, With Reservations*, p. 38 (New York: McGraw-Hill, 1971). The BSSR Report has suggested that these extra monies result from the Bureau's over-reporting to the Congress (unintentionally) of the number of students enrolled in the BIA schools. BSSR Report, pp. 11-14.

40. BSSR Report, pp. 21-22.

41. BSSR Report, pp. 22-23, These figures are from fiscal year 1971.

42. SAFA Division, U.S. Office of Education, reported in Senate Subcommittee Report, page 36.

43. BSSR Report, page 104.

44. BIA Budget Justification, Education and Welfare Services, p. IA-3.

45. Under other programs, proposals are submitted to state education agencies at the same time they are sent to USOE, and USOE program officers confer with state personnel before making funding decisions. These state recommendations are advisory, with final authority remaining at USOE.

46. The Bureau of Social Science Research has demonstrated rather persuasively that there is not any reliable count of the number of Indian children in school in the United States. The BIA presents one set of figures in its publication, *Statistics Concerning Indian Education*, but the BSSR argues persuasively that these figures count a number of children more than once. BSSR Report, pages 11-13. The HEW Office of Civil Rights also does a count,

but because this tabulation excludes all small school districts (where a large number of Indian children are enrolled), this tabulation certainly understates the total enrollment. Similarly, the O.E. tabulations of Impact Aid eligible recipients, and the BIA's tabulation of JOM eligible recipients, each refer only to reservation Indians.

47. BSSR Report, page 78.

48. USOE Task Force Report, page 6.

49. Part of the difference between these two figures is due to different definitions of Indian Education Programs. The BSSR only counted elementary and secondary activities which resulted in actual classroom programs that affected students directly; USOE sometimes used the term "programs benefitting Indians" (see Task Force Report, Appendix F3, which included money for items such as teacher training, adult education, and various higher education programs, Interview with Susan Smith, co-author of BSSR Report, November 29, 1973. For further information about the USOE Report, see Lynn Shelby, Statement Before the Subcommittee on Administrative Practices and Procedures, Senate Judiciary Committee, December 13, 1973, p. 3. Some programs were reported as "Indian" programs if any Indians were enrolled in them, while others were counted only if the participants were majority Indians.

50. Interview with George Crossland and Nancy Pettis, Office of Native American Programs, November 15th and December 3, 1973.

51. Interview with Joy Galinsky, Office of HEW Deputy Undersecretary for Regional Affairs, December 11, 1973.

52. USOE Task Force, page 4 and Appendix A1, page ii-iv; Senate Subcommittee Report, pp. 28-29; USOE, The 1970 Survey of Comprehensive Education, (Chapter V; American Indian Pupils); An Even Chance, p. 2.

53. USOE Survey, page 400. It is to be hoped that all the figures in this paragraph are now somewhat dated, and that a more current survey would report substantially higher participation rates. In the meantime, these figures are the most recent ones available and there is little reason to expect massive changes have arisen.

54. Yet many Indian students are denied even this fundamental equality. In Natonabah, for example, the court found that White students received more money for teachers, school equipment, instructional facilities, and operating expenses than Indian students did.

55. Oklahoma JOM Audit, page 6.

56. 45 C.F.R. 116. 33(c) and 45 C.F.R. 100c, Appendix 8, Sec. G92).

57. 25 C.F.R. 33.41(b).

58. See Title IV, Sec. 442 (b)(6).

59. Sec. 412 (b)(3) and (5).

60. Secs. 442 (b)(6) and 442 (c).

61. An alternative source of money for these purposes are Parts B and C of the Act. Initial programs to train PAC's could be funded as Part B projects to improve Indian educational opportunities, e.g., Sec. 810 (b)(4) and (e)(2). More broadbased training could certainly be funded as adult education programs under Part C. Sec. 314 (a).

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SOURCES OF FINANCIAL AID FOR AMERICAN INDIAN STUDENTS

by

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Among the most important programs administered by the Bureau of Indian Affairs for American Indians is the program of Higher Education which gives grants in aid to Indian students wishing to attend institutions of higher learning. The BIA Higher Education Program probably began with the Act of June 18, 1934, the Indian Reorganization Act, which had a provision to loan funds to Indian students wishing to pursue a college degree. From that beginning the Higher Education program gradually expanded until it reached its present strength and scope.

In 1934 the initial appropriation was $12,000 and there were 55 Indian students who took advantage of the program taking out loans to attend college. Six students graduated the first year of the program indicating that Indians were already attending college on their own but that with Federal assistance even more could be helped to finish their schooling. The growth of the program indicates that it has

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been an important part of the Federal government's educational program for Indian people.

In 1944, 88 students used $55,000 in loans and ten students graduated from college under the program. A decade later, in 1954, 208 students were in the program which had partially evolved into a grant-loan program. $9,390 in grant funds were made available to Indians from the program and $50,000 in loan funds were used with a total of 27 students graduating. The program expanded considerably in the next decade and in 1964, $1,150,000 was used by 1,377 students with 87 graduating that year. In 1974 it is predicted that if all applicants are funded, over 20,000 Indians will be in college and the Higher Education program budget will be $31 million. The total will all be in grants, loans having been eliminated during the previous decade. In another ten years, if the trend of the past decade is any indication of the interest in higher education by American Indians, there will be 50,000 students in college and a budget requirement of over $80 million annually.

The projected figures for 1984 are not pure speculation. The 70's mark the greatest growth period in the history of the program and show that the trend is one of rapid increase on every front.

1970 - 4,271 students - 293 graduates - $ 3,848,000 Budget
1971 - 6,623 students - 345 graduates - 6,098,000 Budget
1972 - 12,238 students - 652 graduates - 15,248,000 Budget
1973 - 13,370 students - 1,250 graduates - 21,058,500 Budget
1974 - 11,395 students - 1,800 graduates - 20,655,950 Budget

The 1974 figure is low and a requested supplemental fund of $6.5 million has been requested to provide for the additional requests for scholarships by Indian students. If this supplemental appropriation is made we can estimate that there will be at least 14,895 students in school during this present year.

An Analysis of This Year's Program

Some 22,000 students requested assistance from the Bureau this year. If all of these students were funded the Bureau's Higher Education budget would be over $31 million. But the Bureau only received a budget of $20,655,950 for FY 1974, a reduction of $402,550, and this budget is only adequate for 11,395 students. This reduced budget meant a reduction of 1,975 students compared with the number assisted during the past year.

Several factors caused the crisis in funding. At the time of the budget submission in January of 1973, the new BEOG program was estimated to provide up to $1,400 for disadvantaged students. This program's offering was reduced to a national average of $260. The difference between the earlier promised amount and the $260 had to be absorbed by other resources.

A second new program, SEOG (replacing EOG) offered a promising alternate source for the disadvantaged. It was predicted that this program would particularly be valuable since the BIA and OE had previously agreed upon a plan for matching BIA funds with the old BOG program funds for Native Americans and it was assumed the matching fund agreement would continue. Late regulations for the SBOG program specifically ruled out BIA funds as being eligible for matching funds for SBOG. This reversal has caused the loss of thousands of dollars for Indian students.

While Work Study, NDS Loans and guaranteed loans continue to be available for the Native American student, due to the limitations of the BEOG and SEOG programs, these other programs were in high competition. The historical facts are that the Native American has not fared well in this competition:

FY 1973				NATIVE AMERICAN PARTICIPATION			
PROGRAM	TOTAL ALLOCATION	AVERAGE NATIONAL AMOUNT	NUMBER STUDENTS ASSISTED	NUMBER ASSISTED	TOTAL RECEIVED	AVERAGE AMOUNT	PRO-RATED
EOG	$210,300,000	$672	323,200	2,000	$1,300,000	$650	$145
CWS	270,200,000	457	592,000	3,000	1,400,000	466	113
NDSL	286,000,000	439	651,200	2,000	900,000	450	72
			TRENDS ESTIMATED FY 1974				
BEOG	122,100,000	260	84,190	4,000	1,400,000	400	245

SEOG - Trend is minimal participation for Native Americans.

CWS - Trend is less than previous years for Native Americans.

NDSL - Trend is about the same as past for Native Americans.

Inflationary college costs meant that higher education dollars did not go as far in 1974 as they had in previous years. The Cost of Living Council has estimated a 10% increase this year over last year. This amount was reflected in college food service and apartment and room rent of an average of $183.00 per student. $2,061,000 of the anticipated supplemental appropriation was designed to issue supplemental grants to 2,681 students of the 11,395 under the program to pay bills for the school year brought on by inflation.

The final factor in reducing the number of Indian students in college this year was the increased number of married students who applied for scholarships. The percentage of married students receiving grants rose from 42% in 1972 to 48% this year and this rise really meant that nearly half of all students receiving grants were married. Grants of other programs, particularly Federal programs funded through the Office of Education, and private and institutional scholarship sources seldom provide for family budgets. The Bureau program therefore had to provide funds to married students if they were to remain in school and married student grants average more than double the grants given to single students.

As early as August of 1973 it became apparent that the appropriated budget funds would not be sufficient to carry the students through the school year. In October an official request was made for additional funds and the $6.5 million was broken down into two basic categories of aid: $2.061 million for those students already in school and $4.439 million to assist approximately 3,500 new students who wished to begin college and who would be attending one semester and a summer session. The crunch was clearly facing Bureau educational programs particularly special programs and eight were discontinued this past year in order to provide more scholarship funds for the basic higher education programs. Among those programs surviving the severe cutback were:

1. American Indian Law Program,
2. Indian School Administration Program,
3. American Indian Scholarship Graduate Program (new),
4. Assistance to three Indian Junior Colleges,
5. Administration of Indian Contracts,
6. Demonstration Counseling Program (new).

In spite of cutbacks, $4,150,458 is being used in administrative and special program operation, leaving only $16,505,492 for actual scholarships. There is a trend to increase the number of tribal contracts, more Indian junior and community colleges are starting, and the Indian Demonstration Counseling Program will need a large increase to assist all colleges with programs of counseling for Indian students.

An Indian medical program hopefully will be launched in FY 1975. The new Office of Civil Rights BIA-OE joint statement to colleges will hopefully clarify the Indian's role in college funding programs to assure their fair share of these funds.

There are a number of possibilities open to make the Higher Education program more efficient. Two Bureau higher education programs (Higher Education and Employment Assistance) could be merged, thus reducing administrative costs, consolidating counseling and other services and offering an all-purpose educational package to the students. The Bureau could begin administering some parts of the Office of Education program for Indian students. This type of administration is already being done in some other programs now under various titles of law but not in Higher Education. Finally, Indian grants could be returned to full administration by area office scholarship personnel rather than through the colleges. Certainly one if not parts of all of these changes will have to be made in the future as the demand for more opportunities in higher education increases.

Native American students continue to shop poorly from the Office of Education financial aid programs. Analysis of the statistics reveals that of the more than 12,000 students eligible for these programs in FY 1973 only about 3,000 were able to benefit from them. Most of those students who did receive some aid from the Office of Education programs usually combined their funds with two program sources and often had funds from three different programs in a package. But a disproportionate number of those receiving Office of Education assistance were attending private colleges leading one to conclude that BIA students usually attended public institutions and OE picked up more students who attended smaller and private schools.

Under the Bureau's Higher Education regulations Indian students are required to apply for financial aid through the institution and to have their financial need determined by the college financial aids officer. The Bureau normally assumes the loan and sometimes the work study portion of the financial aids package. The goal of matching BIA funds with the Office of Education Aid (originated by an agreement between BIA funds and the Office of Education in 1969) has long eluded Native American students. In FY 1973 the Bureau expended over $20 million for grants to students but were able to only receive $3,600,000 in return from the Office of Education programs. Had all Indians under the program realized at least the average amount extended to other students, a total of $19,494,784 would have resulted -- a near match for the Bureau's amount.

FY 1974 Office of Education programs appeared to be more promising initially, however, reduced budgets forced smaller amounts to students while competition grows keener with increased enrollments. To date Native American students are utilizing the new BEOG program, which is limited to first year students and has a national average of $260. While conflicting interpretations characterize the new SEOG program the majority of colleges are determining that BIA funds are not eligible as matching monies for SEOG. Therefore, students must assume loans and other college controlled "self-help" type aids in order to qualify for SEOG. Even work study and NDS loans are in short supply leaving the Native American students no alternative except guaranteed or commercial loans. Area officers which administer the BIA's grants must make the difficult decision whether to fund a reduced number of students adequately or to extend a reduced grant to everyone in order to fund more students. At this writing, the Bureau's budget has been committed to approximately 14,000 students, leaving 6,000 on a pending list. A long awaited joint statement between BIA and Office of Education officials giving firm guidelines on the Bureau's role in funding Native American students in the Office of Education programs seems hopelessly entangled between the lawyers of both groups.

Projection -- FY 1974-1975

In spite of the largest number of Indian students in history receiving grants for higher education and the largest budget for the program ever received, 2,500-3,000 undergraduates and nearly 3,000 graduate students were not given assistance in FY 1973. The number of Indian students being denied assistance will increase dramatically in FY 1974 because the budget will be at least a million dollars less than FY 1973. In all probability, nearly 20,000 Indian students will be applying for funds with a dramatic increase in the number of students seeking assistance to pursue graduate degrees. The present budget will adequately fund only 13,000 students. The crisis in higher education, therefore, concerns providing funds for the nearly 7,000 students who will not receive funds.

The proper balance of scholarships and administrative funds for overhead and special programs is a difficult one to reach. In spite of the termination of a majority of the special programs of previous years which formerly consumed part of the higher education funds, over $3 million is anticipated to be required for the six remaining special programs in FY 1974. When this amount is spent on administration, some 2,500 student scholarships are lost. The difficult funding problems this year will make it imperative to discontinue the ten percent discretionary fund which has been previously used for exploratory and innovative searches for a better use of the scholarship funds. Clearly some hard tinking and reform lie ahead of us in this field. Additional studies must be undertaken to determine how to bring the field of higher education financial aid under control.

A seemingly endless supply of written material dealing with the Indian and his pursuit of higher educational opportunities already exists. Most papers deal with the dropout problem and one document by Dr. Everett Edington (1971) stresses the need for a communication system for the American Indian college student through an Indian coordinator or counselor who can inform high school students about available programs in colleges. He also suggests that coordinators make themselves available and disseminate information through several high school counselors.

Eddie Brown and James Fredrick in their paper Guidance and Counseling of the American Indian College Student, (1971) suggest a "Three Step Summer Orientation Program" for Indian students. The plan proposes an out-reach guidance and counseling program where Indian students would serve as assistant counselors and in essence take an active role in curriculum planning.

An American Indian student advisor at Montana State College went another step further than those counselors who remained on campus, as reported in the document, Report of the American Indian Student Advisor, Academic Year 1969-1970, by Daniel L. Voyich. The report states the advisor worked on a 3/4 time on the job basis to give help and guidance to Indian students in 4 year degree programs. In the performance of this task, he visited six Montana reservations in August and September of 1969 to meet with students who would attend

MSU that fall. He reported that the most prevalent problems facing Indian college students were finances, low grades, dropping courses, and absenteeism.

The aspirational level among Indian youth which is consistently low has sometimes been explained as deriving from a variety of reasons, the most important of which is non-exposure to professions and technical skills that provide a basis for motivation to aspire to become a professional or a technician in some particular field.

An example of what happens to Indian youth with high potentiality is discussed by Eddie Brown in his paper, College Recruitment of the American Indian, (1971) presented at UCLA, American Indian Center. He purports that many intelligent and talented Indian youngsters finish elementary and secondary schools but do not enter college. He contends that a majority of those who do go on to college experience difficulty in keeping an acceptable grade average and must leave school. He goes on to say that Indian students who do not enter college do not do so because of lack of motivation but rather because of a lack of encouragement from high school teachers and counselors. Inadequately planned curriculum and a misunderstanding of the importance of advanced education also contribute to a lack of students attempting to enroll in college programs. Mr. Brown goes on to suggest that recruitment must begin when the student first enters high school and Indians already in college must become active in recruitment activities in high schools with high concentration of Indian students. Colleges need to offer better advisement and assist the Indians to a fair share of all other available sources in financial aid. A new approach in designing a program that will allow the Indian youth to catch up in vital courses such as English, math or science is also needed.

A study of the Higher Education Program by the BIA's Division of Research and Evaluation revealed that nearly 14,000 Native American students attended over 700 colleges and universities in the 1973-1974 school year with over 1,000 students anticipating receiving their undergraduate or graduate degrees this Spring. This number represents only those under sponsorship of the Bureau. It is estimated that at least this many more Indian young people are attending college without the Bureau's assistance.

The Branch of Higher Education (BIA) headed by Mr. Leroy Falling, pointed to several factors that accounted for the phenominal growth of the Higher Education program under the sponsorship of the Bureau:

1. The Indian population mean age is only 17 years, thus thousands are within the school and college age bracket;
2. The FY 1971 statistics booklet states that of 206,683 elementary and secondary school age children, only about 10,000 of these are not in school or about five percent (190,174 actually enrolled);
3. Contrary to much thinking, the Indian child is doing better in school now than in the past: The U.S. Office of Education's Equality of Educational Opportunity Survey by Achievement Tests 1966, reported Indian children scored ahead of Negro, Puerto Ricans and Mexican Americans and third below Whites and Oriental Americans.

	White	Negro	Puerto Ricans	Amer. Indians	Mexican Amer.	Oriental Amer.
Gr. 1 Non-Verbal	54.1	43.4	45.8	53.0	50.1	56.6
Verbal	53.2	45.4	44.9	47.8	46.5	51.6
Gr. 12 Non-Verbal	52.0	40.9	43.3	47.1	45.0	51.6
Verbal	52.1	40.9	43.1	43.7	43.8	49.6
Average 5 Tests	52.0	41.1	43.1	45.1	44.4	50.1

Source: U.S. Office of Educational Equality, Washington, D.C. 1966.

4. Another factor is improved holding power. The often stated comment, "The Indian student dropout rate is twice the national average or 50-60% (Nat. Average 26%)," can no longer be used in the face of new data. A recent study now shows 70% Navajo students (Largest U.S. Tribe) completing high school.

The 30% dropout rate is only 4% behind the national average. Other samples while not so positive show the Indian dropout rate at about 40% or 14% higher than the national average. At the college level on a year to year scholarship basis only about 14% dropout.

5. Motivation to succeed now comes from many fronts instead of limited to personal drive. An increasing number of parents begin early to encourage their children to "get the education they were deprived of in their day." The slightly improved standard of living has made it possible for some families to "spare" a boy or girl to leave home to attend college, even though this still must be considered in the category of a "sacrifice" for most families.

   The BIA study (1973) found that among 2,736 responding to the survey, 77% said their parents motivated and encouraged them to pursue post high school education. Only 20% received information from their high school counselor about BIA's higher education program which also largely reflects the encouragement they received about pursuing post high school education. Parental concern was just as high as the high school counselor.

Tribal Involvement in Higher Education

Tribal leaders continue to show their encouragement for higher education, 47 tribes have their own scholarship program expending well over a million dollars annually to assist their students. Ten tribes now have contracts with the Bureau for the operation of the BIA's Scholarship Program with another ten in a pending status. The ten contracts now operating are:

Omaha Tribe	$ 94,500
All-Indian Pueblo Council	585,518
Laguna Tribe	97,050
Zuni Tribe	80,170
Alaska Federation of Natives	22,000
Tlingit-Haida Central Council	33,940
Great Lakes Inter-Tribal Council	16,850

Red Lakes Chippewa	24,000
Minnesota Chippewa	29,760
Navajo Tribe	1,875,000
TOTAL	$2,858,788

Institutional Effort

The efforts of colleges and universities to provide Indian Centers, Indian Studies programs and counseling services must be recognized as a strong factor in increasing the number of Native American students in college. While many schools removed questionable entrance requirements and offered probationary enrollments, some institutions disregarded all entrance requirements and offered Indian students trial semester enrollments. Sixty-seven institutions now offer some form of financial assistance to Native American students who attend them. It is estimated that at least 100 institutions now either offer one or more courses under the heading of Indian Studies, have one or more Indians on the faculty, offer a meeting place and provide an Indian counselor and/or remedial services utilizing tutors. College presidents are usually very proud to announce the establishment of their Indian Cultural Programs and several institutions are beginning to place these programs on a permanent basis in their curriculum and reflect such in the college catalogs. Perhaps one of the stronger spin-off values of Indian Centers on campuses is the improvement of the Indian image through cultural awareness among students, staff and community.

An example provided here is a table extracted from a dissertation by Eugene Leitka completed in 1973 of the study of the effectiveness of Indian Studies programs in 50 institutions in which 30 institutions with Indian programs specified the importance of having an Indian person as counselor for the Indian students. (See table below.)

Number of Counselors

	Institutions with Native Studies Programs		Institutions without Native Studies Programs	
	Respondents	%	Respondents	%
Yes	27	90.0	9	69.2
No	3	10.0	4	30.8
Indian	24	80.0	8	61.5
Non-Indian	3	10.0	1	7.7
TOTAL	30	100.0%	13	100.0%

(Unpublished dissertation, Eugene Leitka, 1973, page 45.)

When comparing the availability of a counselor for the Indian students, it can be seen that those schools with Native Studies programs have by far the largest number of counselors specifically assigned to help Indian students and a majority of those counselors are Native Indian Americans.

Special Programs

Special programs have made an important impact on the Indian college student. Beginning in 1967 with the American Indian Law Program which had a Higher Education budget of $15,368 to assist seven law students, special programs in FY 1973 included 913 students in 15 special programs utilizing over $3,606,200.

	Students	Amount
American Indian Law Program	156	$630,000
Four-University Indian School Administrator's Program	85	265,000
Head Start Teacher Training	115	200,000
Antioch Para-Legal Training	17	76,000
Dartmouth College Special Indian Program	40	61,200
Assistance to Three Indian Jr. Colleges	416	1,908,000
Three College Work-Intern Programs	50	333,000
Five Other Special Projects	34	133,000
TOTAL	913	$3,606,200

As one might surmise, not all of these special programs were productive. Some were funded for only one or two years. Others represent package funding in which the Bureau's portion is considered "seed" funding.

A new program added in FY 1974 is the American Medical Program to be patterned somewhat after the very successful Indian Law Program.

Examples of the motivating power of special programs to increase in a particular profession is shown by the 1,500 applicants on file for the 156 slots in the American Indian Law School Program and the 250 applications on file for the 85 slots for Indian School Administrator's Program. The new American Indian Medical Program is expected to triple the number of Indians in the health professions.

The great dependence placed on Federal aid by Indian students in colleges is amplified by the study that included 48 Indian students in selected Minnesota colleges. The study was conducted in 1970 by Raymond Wolf at Northern State College, Aberdeen, South Dakota. The study showed BIA grant receiving the greatest number of response to the question of financial aid that made it possible to attend college.

Sources of Funding For Responding
Indian Students in Selected
Minnesota Colleges

Source	Frequency
Parents	13
Relatives	0
Veteran's benefits	0
Tribal loan	1
Federal loan	2
Tribal grant	6
Federal (BIA) grant	41
Vocational-Rehabilitation	0
M. I. S. C.	25
College financial aids	19

Source: Raymond Wolf, 1970, p. 34.

When asked what part of the financial costs were provided by their parents, the distribution of responses can be shown thusly:

Parent contribution	Number
All	0
Most	2
Some	4
Little	11
None	31

Conclusion

The Indian student has not shopped well from other Federal sources offered at colleges for various reasons identified in the main body of this paper. A cooperative agreement between the Office of Education in Washington, Bureau of Indian Affairs and the Office of U.S. Civil Rights is presently pending release. The agreement, in essence, is to suggest the elimination of discrimination against Native Indian American students in obtaining financial aid from the other Federal sources available to them.

The agreement is to be directed toward the institutions as the recipients of Federal funds which places them under the contractual compliance procedures and their responsibility to serve all races without discrimination.

Institutions have looked upon the BIA as the sole supporter of all Indian students and therefore, have not encouraged them to apply for their share of funds from other Federal sources. Clarification of the responsibility the institutions have to the Indian student has been needed but more importantly, a directive derived from an agreement between Office of Education, BIA and Civil Rights Offive has been needed so that institutions can clearly understand how the Federal guidelines are to be interpreted. A proposed draft was produced early in January 1974 by the U.S. Office of Civil Rights which if adopted will bring about a clarification of what those responsibilities are with the colleges. The directive states that funds provided under the Basic Educational Opportunity Grant (BEOG) or other Federal programs are to be made available to all eligible Indian applicants on an equal basis without regard to their eligibility for financial assistance through programs operated by the Bureau of Indian Affairs.

The level of need of such applicants is not to be projected at a lower level than non-Indian students because of the availability of additional assistance. With respect to the allocation of Federal (excluding BIA) funds, therefore, the percentage of money allocated to Indian applicants should approximate the percentage of total dollar need of all eligible applicants represented by the total dollar need of all eligible Indian applicants. The average percentage of financial packages represented by work-study programs, and loans (as contrasted to scholarships) shall not be higher for Indian applicants as a group than for all applicants as a group.

Colleges will be asked to examine their current practices to determine their compliance under the contractual agreement. If the institutions should fail to comply, they will be asked to develop and submit, in writing, together with the submission of data required and a plan setting forth specifically the steps to be taken to achieve compliance.

It is evident that the Indian student must fare better from these other sources than he has in the past. As has been cited earlier in this paper, hundreds of Indian students were deprived of entering college for lack of supporting funds from BIA. If the universities and colleges had been assisting the Indians in obtaining their rightful share from the other Federal sources, it is possible that a majority of those students that were turned away could have had the opportunity to enter college.

Appendix

Below is an example of a typical process a student must face when applying for financial assistance from the BIA. Various tribes and scholarship people are undecided whether this method of allowing the colleges to determine the total needs for the students should continue. Many feel that the local agency should or the scholarship office should have the responsibility of determining the need.

1. Students write to the Admissions Office at the college. Follow college or university instructions to be admitted.
2. Students write to the financial aids director at his college or university requesting financial aid. He names his tribe and area office. Students follow instructions from the college.
3. The college financial aids officer reviews and processes the financial aid form which is the basis for need determination. He then sends the Bureau Area Scholarship Officer a notation of the amount of aid to be offered and the kinds of assistance (BEOG, SEOG, BIA, Loan, Job, etc.).
4. The BIA Phoenix Area Scholarship Officer, Mrs. Ruth A. O'Neil, reviews the financial need of the student and the amount of the BIA funds to be committed. (BIA awards to applicants who choose out-of-state schools are limited to the amount comparable with the cost of a public supported college or university within his home state. Other forms of aid can make up for lower BIA grants to applicants who choose out-of-state schools)
5. A financial aid form is returned to the college with a

supporting statement by the Bureau Area Scholarship Officer which contains the following information:

a. Bureau of Indian Affairs Commitment.

b. Verification of legal Indian status. (At least 1/4 or more Indian blood quantum).

c. Statement of priority. First priority goes to financing needy undergraduate applicants, beginning at the freshman level. Second priority includes all other eligible applicants.

d. Statement justifying greater of lesser financial need than that depicted by the processed financial aid form, if needed.

e. Student reapplys for financial aid to his college each year.

6. The Bureau of Indian Affairs application form must be completed by the student each year. Bureau of Indian Affairs forms must be obtained from the tribe, agency or area office.

7. HEG-EOG deadline -- March 1, 1974.

8. Late applicants will get chronological priority.

9. These preceudres apply to the academic year 1974-1975.

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FEDERAL TREATY RESPONSIBILITY
FOR INDIAN EDUCATION

by

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Indian affairs seems to fluctuate between two different problems. What is the extent of the Federal government's power over the lives and property of Indians? What is the extent of responsibility borne by the Federal government to the Indian tribes on the basis of prior treaties, agreements and statutes? The events of the past century have indicated that the distinction between these two problem areas has not always been clear.

In the last several years there have been a number of events beginning with Alcatraz and ending with the occupation of Wounded Knee that were at least partially triggered by the failure of the Federal government to perform its treaty obligations to Indians. Indians on both sides of the activist question have reminded the current administration that it bears responsibility during this period of American history for upholding the promises and good name of the United States. At its deepest level this reminder is an effort by Indians to forge a

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contemporary definition of treaty rights from the Federal government.

Unfortunately the problem is aggravated because of the mythologies that have arisen concerning past events. Among the career employees of the Federal government the pernicious doctrine has arisen that the mere passage of time serves to nullify the legal rights of American Indians. At the present time the Bureau of Indian Affairs and the Department of Justice both have sufficient legal justification to intervene in legal controversies on the side of Indian tribes and individuals. They fail to do so, however, often claiming that the statute under which they have received authority is decades old and therefore MUST have been superceded by some other statute or decision.

Indians also live in a mythological world in which their rights magically expand and contract to fit the occasion. It is not uncommon to hear tribes with no treaty or agreement orate about the breaking of treaties and solemn promises. No question ever arises concerning exactly what these solemn promises are and from whence they are derived.

This paper deals with future probabilities of how the treaty rights issue may arise in the field of Indian education. There are definite and longstanding legal commitments made by the United States in treaties, statutes and agreements. They are often not as broad as the Indians would like and often much more specific then the government would like. When, however, a specific incident occurs in which an issue arises that touches on the promises made by the Federal government to a specific tribe there is a very good possibility that the issue may be resolved in a finding that the Federal government is compelled to furnish certain services or to respond in certain ways predetermined by treaties, agreements and statutes.

In the last five years the Five Civilized Tribes have had the bed of the Arkansas River confirmed to them, the Puyallups have had their 1854 treaty fishing rights confirmed, and the Navajos have had a tax case decided in which their 1868 treaty played a crucial role in gaining them a favorable decision. To continue to pretend, as many Federal employees do, that the past does not affect the way we see the present and act in the future is absurd. It is equally ridiculous for Indians to pretend that obscure phrases in their treaties give them the right to wander hither and yon shooting off their rifles and making incredible demands on state and Federal officials.

It is impossible to look at a treaty or agreement, pick out a suitable article and demand services and rights. A treaty or agreement stands on the same basis as other legal instruments and requires a set procedure for its interpretation. Among treaties particularly the doctrine has arisen that the text of the document should be interpreted as the two parties understood it at the time it was signed. One cannot, therefore, read into a treaty unreasonable interpretations that would make the document a prediction of things to come and not an instrument of its times.

This doctrine is modified somewhat in a specifically Indian context, however, when it is recognized that the treaty was presented to Indians as a foreign instrument and that the wording of the document may not necessarily coincide with what was told the Indians at the signing ceremony. The gap between the text of the document and the oral tradition of the tribes has been recognized by the courts and generally they have made an effort to compensate for this disparity. This doctrine of interpretation has been expressed in many cases and a fair statement of it is expressed in United States v. Shoshone

Indians:

> Treaties made by the United States with Indian tribes are not to be interpreted narrowly, but are to be construed in the sense in which naturally the Indians would understand them in view of the fact that the United States seeks no advantage for itself in such treaties and friendly and dependent Indians are likely to accept without discriminating scrutiny the terms proposed.[1]

The literal translation of a treaty text which is so often the tendency of Indians and bureaucrats alike is not a proper handling of the problem. Rather the documents must be read in the light of a reasonable expectation of the Indians that the United States intended to provide them with sufficient services to enable them to make a transition from their former life to a life more in line with the White man's way. The doctrine applies not simply to treaties in their literal sense but it applies particularly when the words are vague and ambiguous:

> In construing an ambiguous agreement or treaty between Indians and the government, both reason and authority concur in holding that what was told the Indians when the negotiations were in progress is material and controlling; and how the words used in the instrument were understood by the Indians, rather than their critical meaning, should form the rule of construction.[2]

The doctrine is expanded further when rules of evidence are applied to Indian treaty cases:

> The intention and understanding of an Indian tribe as to the rights secured to it by conventions are of paramount importance, and to that end the proceedings of councils at which they were ratified are admissible in evidence.[3]

When we speak of determining the rights of Indians under treaties, we are not simply speaking of the text of the treaty but the incorporation of the proceedings, congressional hearings or other official government reports that would tend to indicate what the government told the

Indians and what they believed they were receiving from the United States.

Once this determination has been made and the treaty texts, the minutes of the proceedings and other relevant documents are surveyed to determine the meaning of the phrase under consideration, other doctrines come into play. One of the doctrines that must be considered at this point is that ambiguous provisions of Indian treaties or contracts are taken more strongly against the government than against the Indians.[4] The point is more than rhetorical. The United States knew what it was doing when it proposed the phrase or article under consideration. Once the full meaning of the phrase is determined then it is applied with more strength against the United States than against the Indians. Events that would ordinarily void the right if decided on a contractual basis remain nullified if the intent of the parties has clearly been determined and if the parties both acted with relative good faith. Good faith is not construed as strongly against the Indians as against the government. We shall return to this point in our future discussion of treaty educational articles.

Determining, therefore, is the reasonable interpretation of a treaty article by giving consideration to the understanding of the Indians. "Indian treaties must be liberally construed to the end that Indians retain the benefits conferred by treaty at its execution."[5] It is not sufficient that the United States foreswear any intent to take advantage of the tribes during the formal ceremony of signing the treaty. Interpretation of the treaty comes years, sometimes decades, after the treaty has been ratified and the intent of this doctrine is that the courts do not take away from the tribes the rights which they were given in the treaties and agreements.

The doctrine of interpretation which demands that benefits received in the treaties not be argued away by later courts and Congresses finds its final repose in the traditional doctrine that one cannot imply the abrogation of a treaty or a treaty right. The doctrine has been articulated many times with respect to tax exemption of trust lands and hunting and fishing rights. The guideline by which one can judge the attempted abrogation of a treaty or agreement right is that: "The power of Congress to abrogate the provisions of an Indian treaty will be exercised only when demanded by the interests of the country and of the Indians themselves."[6] A real question arises, when we deal with educational provisions of the treaties since by no stretch of the imagination can the educational provisions of treaties be abrogated by Congress as long as Indians remain in the condition in which they have not achieved educational parity with the other citizens of the nation.

The final question concerning the interpretation of treaty articles concerns the role of the United States following the signing of the treaty or agreement and the evolution of its responsibilities toward the Indian tribe. At this point the traditional trust relationship articulated in numerous statutes seems to merge with the treaty rights which, even at a liberal reading in favor of the government, must assume that the parties are at an arm's length in their roles and identities.

> In carrying out treaty obligations with Indian tribes, the government is more than a mere contracting party, but occupies a position of trust and its conduct should be judged by the most exacting fiduciary standards.[7]

The Federal government thus finds itself in an exacting position with respect to Indian tribes. On the one hand it has dealt with them as quasi-independent nations, and many times in the early treaties as independent nations. On the other hand it has gradually assumed a trustee role towards Indians which is articulated in statutes but which comes to fruition in numerous interpretations of its role under the treaties. There is no way that the United States can stand back and pretend that it must deal with the tribes on a legalistic basis or on the basis that it has an equal responsibility for all citizens. Having signed and ratified the treaty, the government is then bound to provide services and supervision where it has clearly accepted responsibility and it must accept its role as a trustee with the highest fiduciary responsibility. In effect this doctrine announces that if necessary the government must turn upon itself and develop a dual role with respect to Indians that it might not necessarily develop with respect to its own citizens or even foreign nations.

It is within this context, therefore, that we can begin to discuss the treaty and agreement responsibilities of the Federal government today. Our task will be to survey the various educational provisions in treaties and agreements to determine the relative validity of their terms today. We cannot say that any one article, phrase, or section of a treaty is absolutely enforceable today but we can determine how that controversy might be developed in the light of the many numerous doctrines of interpretation that must be considered when determining if the United States has some liability.

One further concept must be noted. Traditionally the government, primarily through the Congress, has committed the supervision of Indian matters to the Department of the Interior and the Bureau of Indian Affairs. Many statutes and treaties provide that the Secretary of the Interior shall carry out its provisions under the direction of the President.[8] A number of other treaties and statutes provide that the President himself shall determine how and when the provision shall be carried into effect.[9]

The treaty or the argeement is not, however, signed with the Department of the Interior or the Bureau of Indian Affairs. It is signed with the United States government and this identity includes nearly every agency established under Federal law with the exception of the quasi-Federal institutions such as regional commissions, advisory committees, and Federally-funded programs. While the question has not yet arisen concerning the treaty responsibility of the Secretary of Health, Education and Welfare or the Attorney General, the fact remains that when the President assigns duties to any department or when Congress passes educational statutes designed to provide some of the same services still due to tribes under their treaties, the possibility exists that those duties will be found to be ultimately based in treaties and agreements and not simply in Presidential directives or statutes.

Doctrines evolve and devolve and there has been no determination that the trust responsibility of the United States for Indian tribes rests exclusively with the Department of the Interior or that only the Bureau of Indian Affairs can respond to the needs of the tribes. Any agency that becomes involved in the field of Indian affairs can look forward to the possibility of discovering that it is acting as an instrumentality of the United States in carrying out its treaty obligations to Indians. While we must still talk in generalities, the fact that the Department of Health, Education and Welfare is already far down the road of assuming partial responsibility for the fulfillment of treaty obligations to Indians.

Types of Education Provisions in Treaties

It is certain that the Federal government assumed some responsibility for Indian education in the treaties. Numerous articles outline the services and moneys that are to be committed to Indian education beginning in 1817 with the Treaty with the Wyandots and continuing until the series of 1868 treaties with the tribes of the high plains. Not all the tribes were included in this sequence of treaties and some tribes that had treaties had extinguished their specific educational rights prior to the end of the period. Still other tribes came under the Federal government's increasing assumption of the administration of tribal affairs so that their educational treaty provisions were converted into ongoing Federal programs.

What we can derive, at this time in history, is the types of educational provisions contained in the treaties and the varying forms of vested interest which they represent. Whether or not the Federal government is specifically obliged to provide services in education to all Indians seems to be a muted issue because of the several Indian education bills passed in this century by the Congress. Within the context of these education acts, however, one can still find specific responsibilities to certain tribes based on longstanding treaty obligations and these obligations particularly cannot be avoided. We are looking, therefore, at types of obligations and not at each specific article that may contain a promise of Federal involvement.

Perpetual Services

The easiest type of treaty educational provision to discuss is that of the perpetual service -- the promise to provide educational services for an indefinite period of time. A provision in the treaty with the Molala of Oregon, December 21, 1855 is typical of the perpetual services promise:

> To establish a manual-labor school, employ and pay teachers, furnish all necessary materials and subsistence for pupils, of sufficient capacity to accomodate all the children belonging to said confederate bands, of suitable age and condition to attend said school. (Article 2, clause 4)[10]

This provision is distinguished from provisions in other treaties in that no term of years is mentioned that could conceivable be considered a limitation on the period for which the United States would provide services. The other clauses of the second article of this treaty all give specific terms of years for which services will be provided. It would be impossible for a court to imply that the failure to mention a term of years negated the clause concerning education of for a court to imply that the term of years set for the sawmill or the services of a carpenter should be interpreted to refer to the educational provision as well. Almost every appropriation request until the late 1920's mentioned this provision as a specific item indicating that the government recognized its perpetual nature.

A more detailed but hardly less specific provision is contained in the Treaty with the Pawnees of September 24, 1857:

> Article 3
>
> In order to improve the condition of the Pawnees, and teach them the arts of civilized life, the United States agree to establish among them, and for their use and benefit, two manual-labor schools, to be governed by such rules and regulations as may be prescribed by the President of the United States, who shall also appoint the teachers, and if he deem necessary, may increase the number of schools to four. In these schools, there shall be taught the various branches of common-school education, and in addition,

> the arts of agriculture, the most useful mechanical arts, and whatever else the President may direct. The Pawnees, on their part, agree that each and every one of their children, between the ages of seven and eighteen years, shall be kept constantly at these schools for, at least, nine months in each year; and if any parent or guardian shall fail, neglect, or refuse to so keep the child or children under his or her control at such school, then, and in that case, there shall be deducted from the annuities to which such parent or guardian would be entitled, either individually or as parent or guardian, an amount equal to the value, in time, of the tuition thus lost; but the President may at any time change or modify this clause as he may think proper. The chiefs shall be held responsible for the attendence of orphans who have no other guardians; and the United States agree to furnish suitable houses and farms for said schools, and whatever else may be necessary to put them in successful operation and a sum not less than five thousand dollars per annum shall be applied to the support of each school, so long as the Pawnees shall, in good faith, comply with the provisions of this article; but if, at any time, the President is satisfied they are not doing so, he may, at his discretion, discontinue the school in whole or in part.[11]

The President's discretion is outlined with respect to two events. First, he may withhold the annuities due to any adult who deliberately fails to support the educational provision. Second, he may decide that the Pawnees are not complying in good faith with the educational provision and discontinue the schools. A question arises here as to what type of behavior constitutes acting out of good faith. Is a hearing required? What evidence is needed to prove that the Pawnees were deliberately violating the provisions? It is doubtful that any temporary failure to perform would constitute grounds for the President to discontinue the schools. We already have the provision for punishment of individual parents and so the behavior that would constitute a violation of the provision would have to be more blatant than simply refusing to send the children to school. In all probability the article remains good today and the United States is obliged to provide schooling satisfactory to the Pawnees under this provision.

A more specific articulation of this type of provision is that of the treaty of April 19, 1858 with the Yankton Sioux:

> Article 4, clause 4th
>
> To expend ten thousand dollars to build a schoolhouse or schoolhouses, and to establish and maintain one or more normal-labor schools (so far as said sum will go) for the education and training of the children of said Indians in letters, agriculture, the mechanic arts, and housewifery, which school or schools shall be managed and conducted in such manner as the Secretary of the Interior shall direct. The said Indians hereby stipulating to keep constantly thereat, during at least nine months in the year, all their children between the ages of seven and eighteen years; and if any of the parents, or others having the care of children, shall refuse or neglect to send them to school, such parts of their annuities as the Secretary of the Interior may direct, shall be withheld from them and applied as he may deem just and proper: and such further sum, in addition to the said ten thousand dollars, as shall be deemed necessary and proper by the President of the United States, shall be reserved and taken from their said annuities, and applied annually, during the pleasure of the President to the support of such schools, and to furnish said Indians with assistance and aid and instruction in agricultural and mechanical pursuits, including the working of the mills, hereafter mentioned, as the Secretary of the Interior may consider necessary and advantageous for said Indians; and all instruction in reading shall be in the English language....And whenever the President of the United States shall become satisfied of a failure, on the part of said Indians, to fulfill the aforesaid stipulations, he may, at his discretion, discontinue the allowance and expenditure of the sums so provided and set apart for said school or schools, and assistance and instruction.[12]

The clause raises more questions than it resolves. Apparently the school was to be operated partly out of annuity funds from the general funds due the tribe for their cession of lands. Yet the President had reserved powers to discontinue the schools and instructions if he found that the tribe was not acting in good faith. The clause commits the United States to provide the educational services as long as the tribe complies with the provisions of the treaty and only a blatant and determined resistance on the part of the tribe would serve as grounds to discontinue the schools and instructions. The original annuity provisions had a sixty year time period over which they were to be paid. Subsequent amendments must be taken into account when interpreting this clause of article 4. On December 31st, 1892 the United States and the Yankton Sioux made an agreement which was later ratified by the Congress and this agreement continued and clarified the treaty of 1858.

Article V contained the following provision:

> Out of the interest due to the Yankton tribe of Sioux Indians by the stipulations of Article III, the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior may determine, as follows: For the care and maintenance of such orphans, and aged, infirm, or other helpless persons of the Yankton tribe of Sioux Indians, as may be unable to take care of themselves; for schools and educational purposes for the said tribe; and for courts of justice and other local institutions for the benefit of said tribe, such sum of money annually as may be necessary for these purposes, with the help of Congress herein stipulated, which sum shall not exceed six thousand dollars ($6,000) in any one year: PROVIDED, That Congress shall appropriate, for the same purposes, and during the same time, out of any money not belonging to the Yankton Indians, an amount equal to or greater than the sum set aside from the interest due to the Indians as above provided for.[13]

The amount available to the tribe was the interest from a fund of $500,000 due them from the sale of their lands which was to be set aside in the treasury at an interest rate of 5%. The Secretary of the Interior was to have the power to draw up to $20,000 a year for the use of the tribe. The fund was to become due to the tribe in full at the pleasure of the United States after a twenty-five year period of trust. The fund would become an obligation to be paid in

1917 but the interest which totaled $25,000 a year was to be added to the principal unless drawn by the Secretary of the Interior and of that $25,000 not more than $6,000 could be used for educational purposes. Article V, as we have seen, provided that the Congress "out of any money not belonging to the Yankton Indians" was to set aside an amount equal to or greater than the tribal funds set aside from the interest for the purposes of Article V -- education and welfare and operation of the tribal courts.

Article XVIII had the following provision:

> Nothing in this agreement shall be construed to abrogate the treaty of April 19, 1858, between the Yankton tribe of Sioux Indians and the United States. And after the signing of this agreement, and its artification by Congress, all provisions of the said treaty of April 19, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858.[14]

It would appear when the treaty and agreement are combined that the Congress assumed full responsibility for the education of the Yankton Sioux tribe that continues to the present. The specific terms of years for annuities and interest on the 1892 fund are matters for accountants to handle. What is apparent is that the treaty governs the interpretation and implementation of the agreement and the treaty rights expand when the agreement is added. Congress, in Article V, assumes a responsibility to provide, out of funds not due the tribe, appropriations for the education, welfare and local government of the tribe. It would also seem that this provision is one that might be enforced against the government.

Implied Perpetual Services

The provisions discussed above clearly had no time limit within which the United States was to provide services. Other treaty provisions are not as textually clear but stand on the same legal basis. We shall call them, for purposes of distinguishing categories only, implied perpetual provisions. Almost all of these provisions occur in the 1867-1868 series of treaties signed as a part of Grant's peace policy with the western tribes. Among the tribes sharing these provisions are the Kiowa and Comanche (1867), the Cheyenne and Arapaho (1867), the Ute (1868), Sioux and Arapaho (1868-Fort Laramie), Crow (1868), Northern Cheyenne and Arapaho (1868), Navaho (1868), and Eastern Band of Shoshones (1868).

There has been considerable litigation over the meaning of the treaty phraseology of this series of treaties, particularly on behalf of the Sioux with the Fort Laramie Treaty. The United States Court of Claims faced the question of the educational provisions of the treaty in a case in 1936, Sioux Tribe of Indians v. United States.[15]

In this case the Sioux tribe sued the United States for damages of $18,090,365.46 claiming that the government had deprived the Sioux of educational benefits entitled to them under the treaty. "The record," the court noted, "establishes that for a long period of time the Government did not strictly observe the provisions of the seventh article of the treaty of 1868 or Section 16 of the act of 1889 (which repeated the 1868 educational provision) with respect to furnishing the educational facilities provided for therein."[16]

Excerpts from the court's decision are very useful in determining the meaning of the treaty and the context in which the treaty was to be interpreted:

> The governmental purpose to be accomplished by entering into the treaty is manifest from its express provisions. We are again called upon to repeat what has been for so long recognized and so many times stated, that the Government was treating with then uncivilized Indian tribes occupying a vast extent of landed territory which the Government knew it must acquire in part or face the inevitable conflict between the Indians and the white settlers. The governmental policy was firmly established. Its efforts were to be exerted in an attempt to civilize the Indians, teach them agriculture, and of course provide for their children the facilities of an elementary English education, a most important element of its policy.
>
> * * * *
>
> The treaty was not intended to obligate the Government to simply erect schoolhouses and employ teachers. It was not a unilateral contract. It exemplifies the experimental nature of the undertaking and imposes mutual obligations upon the parties. The benefits to accrue were not wholly material. The objects to be accomplished possessed a much wider significance. The Indian parent was to be taught to appreciate the value of an education to his child, and the children the advantage of the same in their contacts with the Whites now rapidly coming into Indian habitations and Indian lands.
>
> The plaintiffs say that the Government is at fault if a sufficient number of children could not be compelled or induced to attend available Indian schools, because the seventh article of the treaty of 1868 'made it the duty of the agent for said Indians to see that this stipulation is strictly complied with.'
>
> * * * *
>
> True, the agent could induce attendence, but for him to seek to compel, as some of them did, was but to invite the demonstration of serious hostility, which actually occurred. Aside from this, however, the duty mentioned was to see to it that, when the status quo mentioned in the treaty obtained, the treaty provisions with respect to schoolhouses and teachers would be strictly adhered to.[17]

> * * * *
>
> Innumerable Indian cases clearly demonstrate - none in a more pronounced way than this one -- that it exacts a long period of time to translate tribal Indians into reservation ones, to bring home to them the advantages of education and civilization, and overcome a native and natural hostility of the tribe towards the Whites whom they regard as trespassers upon their lands. In this case it required thirteen years to bring about peace with Sitting Bull and his numerous followers.
>
> In 1873, five years after the date of the treaty, the Commissioner of Indian Affairs was recommending the establishment of military posts at each of the agencies to enforce respect for their authority and enable the agency affairs to be conducted, and we think it is established by the great perponderance of evidence that it was not until 1881 or thereabouts that the Sioux Tribe as a whole manifested a disposition and intent to inhabit the treaty reservations and embrace the treaty provisions looking towards their care and civilization.[18]

The Sioux did not recover the damages they sought.

The problem that the court faced was that of deciding whether or not the provision constituted a unilateral contract upon which monetary damages could be awarded. Obviously the article was not a unilateral contract and no damages were awarded. When we look at the actual treaty provision, however, we wonder why it was that both the government and the Indian attorneys considered the treaty article to be a unilateral contract:

> ARTICLE VII In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and

> faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than twenty years.[19]

What attorneys for both sides failed to recognize, which the court partially recognized, is that the provision is not for a term of twenty years but that it is for a term of not less than twenty years; that is to say, until the Sioux are civilized. The provision, if we are to believe the Court of Claims, was made by the United States in full recognition that "it exemplifie(d) the experimental nature of the undertaking and impose(d) mutual obligations upon the parties. The benefits were not wholly material. The objects to be accomplished possessed a much wider significance."

The treaty article must be read, therefore, in the light of conditions as they existed and in view of what must have been the full recognition by the United States that it was going to be much longer than twenty years before the Sioux would be ready to take advantage of an elementary English education. The article must be read as a commitment by the United States to provide educational services to the Sioux and other tribes having the same treaty provision for as long as it should take to "translate tribal Indians into reservation ones."

The obligation is not quite perpetual, therefore, since it clearly foresees the day when the tribes will become accustomed to the ways of the White man. However it can be implied to be perpetual in its interpretation because the United States knew very well that it could not conceivably accomplish this task in a twenty year period. Further, the same treaties made provisions to pay Indians who farmed an annual annuity of twenty dollars for thirty years and an annual annuity for Indians who hunted ten dollars a year for thirty years. The government could not argue that it intended to pay hunting and roaming Indians ten dollars a year for thirty years and that it also intended to provide educational services for only a period of twenty years when its mission was to promote "civilization" among the Indians.

We must conclude that these treaty obligations are still in effect since they are interpreted in that manner by the court. For some strange reason the other 1867-1868 treaties having the same educational article have never been the subject of litigation with respect to the educational provisions.

Long Term at the President's Discretion

A variation of the perpetual treaty education obligation is that of the indefinite term of responsibility which can be terminated primarily at the President's discretion. These types of treaty articles are fairly common in the treaties of every era. They generally involve not simply educational services but more often specific services that are required at some period of the tribe's adjustment to the ways of the White man.

A typical provision would be:

> The United States engage to provide and support a blacksmith for the Indians, at Saginaw, so long as the President of the United States may think proper, and to furnish the Chippewa Indians with such farming utensils and cattle, and to employ such persons to aid them in their agriculture, as the President may deem expedient. (Article 8. Treaty with the Chippewa, 1819)[20]

> The United States agree to provide and support a blacksmith and wheelwright for the said party of the second part, and give them instruction in agriculture, as long, and in such manner, as the President may think proper. (Article 7. Treaty with the Creeks, 1825)[21]

> The United States agree, to allow annually five hundred dollars, for five years, for the purposes of education, which sum shall be expended under the direction of the President; and continued longer if he deems proper. The schools, however, shall be kept within the limit of said tribe or nation. (Article IV. Treaty with the Oto and Missouri, 1833)[22]

These articles appear to give a permanent right to educational services to the tribe subject to termination only upon the discretion of the President. The question is not whether Congress has the responsibility to provide funds but whether the provision continues until such time as the President determines that the services shall stop and how the President makes such a determination.

The right to services is thus not a vested right insofar as the tribe can enforce the obligation in a court. However pending a formal announcement of the President that he has determined that the tribe is no longer in need of the services it would seem that a right exists for the tribe to seek specific educational services by claiming that the President has not yet announced his determination that the services shall stop. The danger in attempting to make this type of provision a legally vested right would be in its intrusion into the President's discretion.

Suppose, for example, that the President determined that a college education was sufficient to fulfill a treaty provision, could he transfer the obligation from that of providing a blacksmith to that of providing a college education? If we take the idea of what the blacksmith, metal working, gun repair and shoeing of horses represented at the time the treaty was made and transpose those services into contemporary terms, we are talking about vocational education courses. A vocational education course in auto mechanics might conceivably fall within the original intent of the treaty as transposed many times by changes in both White and Indian culture. A course in medicine might not be as easily justified.

The idea may sound extremely hypothetical. However we have already seen in the discussion of the 1868 treaty provisions that the Federal courts have recognized that the United States, in signing the treaty, undertook to provide services that it knew would take a considerable amount of time and that would require a certain amount of flexibility in application and interpretation. What is certain in these articles is that the service continues as long as the President considers it beneficial to the Indians and in this sense it would take a formal disclaimer by the President to end the relationship.

We have just discussed a service that continues as long as the President deems it necessary to the tribe. There are, in addition, definite services to be carried out "under the direction of the President." The difference between the two types of services is that the President has discretion in one case and the responsibility continues as long as he does nothing to terminate it. In the other case a definite service is described which the President must direct but which he has no power, in most cases, to terminate.

Some typical examples of the latter are:

> The United States stipulate that the reservations and the tract reserved for a school fund, in the first article of this treaty, shall be surveyed and sold in the same manner, and on the same terms, with the public lands of the United States, and the proceeds vested, under the direction of the President of the United States, in the stock of the United States, or such stock as he may deem most advantageous to the Cherokee nation. The interest or dividend on said stock, shall be applied, under his direction, in the manner which he shall judge best calculated to diffuse the benefits of education among the Cherokee nation on this side of the Mississippi. (Article 4. Treaty with the Cherokees, 1819)[23]

> To be laid out under the direction of the President for the establishment of manual-labor schools; the erection of mills and blacksmith shops, opening farms, fencing and breaking land, and for such other beneficial objects as may be deemed most conducive to the prosperity and happiness of said Indians, thirty thousand dollars, ($30,000). (Article 4, Clause 2. Treaty with the Sisseton and Wahpeton Bands of Sioux, 1851)[24]

If any treaty articles resemble a contractual arrangement it would be articles of this type. The United States agrees to establish a tribal fund or provide buildings and services for the tribe and the President is directed by the terms of the treaty to supervise the performance of the agreement. Except in those cases where the President is given discretion in varying the terms of the article or is given discretion to vary the length of time that the services will be performed, he has no other course than to direct the activities described. Individual tribal trust funds may be traced to determine whether or not the funds still exist or whether they have been surrendered by the tribe, commuted by Congress, or transferred to a general fund or program. We shall make no effort to trace individual tribal accounts in this paper since that is a task of tribes litigating accounting claims in the Indian Claims Commission. What is important in these cases is a recognition that the treaty provisions in education often give a definite command to the executive branch which it is bound to carry out.

School Lands and Educational Services

There are two categories of treaty educational provisions dealing with the transfer of lands. One category involves the cession of lands to a private agency, usually a church, which in turn agrees to provide the tribe with certain educational services. The Federal government acts in the role of a transfer agent to ensure that the tribe receives a fair bargain in the transaction. Sometimes a reversionary clause is inserted providing that the Secretary of the Interior can take the land back and sell it for public purposes. Sometimes the reversionary clause provides that the lands will be restored to the tribe for educational purposes whenever the private agency foils or ceases to provide services.

The other category of land transfer involves setting aside lands within the ceded area for sale with the proceeds going into a special tribal educational fund. Other times lands are set aside within the reserved lands of the tribe for use as educational lands either to build a schoolhouse upon or to provide income to support the tribal school. Depending upon the specific nature of the land transfer certain rights would appear to arise in the treaty article because it is apparent that the tribe is bargaining for a definite and identifiable trust relationship that requires a specific response from the party, Federal or private.

Some examples of the first category of educational land provisions are:

> Some of the Ottawa, Chippewa, and Potawatomy tribes, being attached to the Catholic religion, and believing they may wish some of their children hereafter educated, do grant to the rector of the Catholic church of St. Anne of Detroit, for the use of said church, and to the corporation of the college at Detroit, for the use of the said college, to be retained or sold, as the rector and corporation may judge expedient, each, one half of three sections of land, to contain six hundred and forty acres, on the river Raisin, at a place called Macon; and three sections of land not yet located, which tracts were reserved, for the use of the said Indians, by the treaty of Detroit, in one thousand eight hundred and seven; and the superintendent of Indian affairs, in the territory of Michigan, is authorized, on the part of the said Indians, to select the said tracts

> of land. (Article 16. Treaty with the Wyandot and Other Tribes, 1817)[25]
>
> The grants of land above made to missionary societies and churches, shall be subject to these conditions: The grant to the Missionary Society of the Methodist Episcopal Church South, at the Indian manual-labor school, shall be confirmed to said society, or to such person or persons as may be designated by it, by patent, from the President of the United States, upon the allowance to the Shawnees, by said society, of ten thousand dollars, to be applied to the education of their youth; which it has agreed to make. The grants for the schools established by the Baptists and Friends, shall be held by their respective boards of missions, so long as those schools shall be kept by them - when no longer used for such purpose by said boards, the lands, with the improvements, shall under the direction of the President, be sold at public sale, to the highest bidder, upon such terms as he may prescribe, the proceeds to be applied by the Shawnees to such general beneficial and charitable purposes as they may wish: Provided, that the improvements shall be valued, and the valuation deducted from the proceeds of the sale, and returned to said boards respectively. (Article 6. Treaty with the Shawnees, 1854)[26]

Interpretations of these articles might vary since there is a question whether the provision is a contract between the tribe and the United States with the missionary society as a third party beneficiary or an agreement between the United States and the missionary society with a confirmation made by the tribe.

Perhaps the most extensive article of this type occurs in the treaty between the United States and the Chippewa of Saginaw, Swan Creek, and Black River in 1864:

> Article 4. The United States agrees to expend the sum of twenty thousand dollars for the support and maintenance of a manual-labor school upon said reservation: Provided, that the Missionary Society of the Methodist Episcopal Church shall, within three years after the ratification of this treaty, at its own expense, erect suitable buildings for school and boarding-house purposes, of a value of not less than three thousand dollars, upon the southeast quarter of section nine, township fourteen north, of range four west, which is hereby set apart for that purpose.

The superintendent of public instruction, the lieutenant governor of the State of Michigan, and one person, to be designated by said missionary society, shall constitute a board of visitors, whose duty it shall be to visit said school once during each year, and examine the same, and investigate the character and qualifications of its teachers and all other persons connected therewith, and report thereon to the Commissioner of Indian Affairs.

The said Missionary Society of the Methodist Episcopal Church shall have full and undisputed control of the management of said school and the farm attached thereto. Upon the approval and acceptance of the school and boarding-house buildings by the board of visitors, the United States will pay to the authorized agent of said missionary society, for the support and maintenance of the school, the sum of two thousand dollars, and a like sum annually thereafter, until the whole sum of twenty thousand dollars shall have been expended.

The United States reserves the right to suspend the annual appropriation of two thousand dollars for said school, in part or in whole, whenever it shall apprear that said missionary society neglects or fails to manage the affairs of said school and farm in a manner acceptable to the board of visitors aforesaid; and if, at any time within a period of ten years after the establishment of said school, said missionary society shall abandon said school or farm for the purposes intended in this treaty, then, and in such case, said society shall forfeit all its rights in the land, buildings, and franchises under this treaty, and it shall then be competent for the Secretary of the Interior to sell or dispose of the land hereinbefore designated, together with the buildings and improvements thereon and expend the proceeds of the same for the educational interests of the Indians in such manner as he may deem advisable.

At the expiration of ten years after the establishment of said school, if said missionary society shall have conducted said school and farm in a manner acceptable to the board of visitors during said ten years, the United States will convey to said society the land before mentioned by patent in trust for the benefit of said Indians.

In case said missionary society shall fail to accept the trust herein named within one year after the ratification of this treaty, then, and in that case, the said twenty thousand dollars shall be placed to the credit of the educational fund of said Indians, to be expended for their benefit in such manner as

> the Secretary of the Interior may deem advisable.
>
> It is understood and agreed that said missionary society may use the school-house now standing upon land adjacent to the land hereinbefore set apart for a school-farm, where it now stands, or move it upon the land so set apart.[27]

It would appear that the missionary society in effect assumes some of the Federal government's trust responsibility for Indian education in accepting the land and appropriations. Whether, therefore, the United States could validly prohibit its funds from going to sectarian schools as it did in the 1890's would seem to be a question affecting both the missionary society and the tribe involved. Some of these conveyances must certainly create a cause of action for the tribe in that the missionary society, wisely or foolishly, agrees to give almost unlimited educational services to the tribes in return for the confirmation of land title.

The other category, setting aside lands to create tribal funds for education, involves a number of corollaries in specific instances where tribes insisted upon certain features such as local control. We shall deal with the most general provision first. Some examples of the setting aside of lands to create educational funds are:

Treaty with the Choctaw, 1820

> Article 7. Out of the lands ceded by the Choctaw nation to the United States, the Commissioners aforesaid, in behalf of said States, further covenant and agree, that fifty-four sections of one mile square shall be laid out in good land, by the President of the United States, and sold, for the purpose of raising a fund, to be applied to the support of the Choctaw schools, on both sides of the Mississippi river. Three-fourths of said fund shall be appropriated for the benefit of the schools here; and the remaining fourth for the establishment of one or more beyond the Mississippi; the whole to be placed in the hands of the President of the United States, and to be applied by him, expressly and exclusively, to this valuable object.[28]

Treaty with the Osage, 1825

> Article 6. And also the fifty-four tracts, of a mile square each, to be laid off under the direction of the President of the United States, and sold, for the purpose of raising a fund to be applied to the support of schools, for the education of the Osage children, in such manner as the President may deem most advisable to the attainment of that end.[29]

These funds differ somewhat from the general establishment of funds made in the treaties for education in that the tribe makes a cession of lands for the express purpose of establishing its own schools and the funds derived from the sales of such lands are identifiable funds. It would appear that these funds are to remain segregated in the Federal treaaury, that their expenditure is to be directed by the President, and that whatever else may happen to the tribe in its further dealings with the Federal government, the establishment of the fund by treaty vests a property interest in the fund which no subsequent act of Congress can divest.

Tribal Educational Funds

The corollary of the tribal land educational fund is the general educational fund received by the tribe upon treaty ratification. We make the distinction between land funds and educational funds because general educational funds are a part of the overall commitment made by the United States to apply a certain proportion of the general land cession moneys to educaiton. Which lands would be returned to the tribe because the educational article had been violated in the case of a blatant default by the United States immediately following the ratification of the treaty? It is impossible to distinguish which lands were educational, which were general annuity, and which paid debts, provided services or paid for land surveys?

With the land educational funds, the lands to be sold for educational purposes are already identified in the treaty article and are set aside for the express purpose of creating an educational fund. In the event that the treaty would be fundamentally breached, the tribe could identify the specific lands that had been sold to create the fund and could take action to get them restored. With this fundamental distinction in mind, let us look at some of the general educational funds set up in the treaties:

Treaty with the Sauk and Foxes, Etc., 1830

> Article V. And the United States further agree to set apart three thousand dollars annually for ten successive years, to be applied in the discretion of the President of the United States, to the education of the children of the said Tribes and Bands, parties hereto.[30]

Treaty with the Chippewa, etc., 1833

> Article 3d...Seventy thousand dollars for purposes of education and the encouragement of the domestic arts, to be applied in such manner, as the President of the Untied States may direct.-(The wish of the Indians being expressed to the Commissioners as follows: The united nation of Chippewa, Ottawa and Potawatamie Indians being desirous to create a perpetual fund for the purposes of education and the encouragement of the domestic arts, wish to invest the sum of seventy thousand dollars in some safe stock, the interest of which only is to be applied as may be necessary for the above purposes. They therefore request the President of the United States, to make such investment for the nation as he may think best. If however, at any time hereafter, the said nation shall have made such advancement in civilization and have become so enlightened as in the opinion of the President and Senate of the United States they shall be capable of managing so large a fund with safety they may withdraw the whole or any part of it.)[31]

As we can see, these funds are not identified according to specific lands sold but are a part of the general bargain struck between the tribe and the Federal government during the negotiations. They remain the property of the tribe and, depending upon the specific treaty, are administered by either the President or the Secretary of the Interior. Perhaps the only restriction on them would seem to be that they must be expended for educational purposes. The definition, however, of what constitutes education under these general provisions, is a matter for the President to determine and not the tribe. Lack of ultimate tribal control, therefore, is an additional characteristic of these funds.

Indian Controlled Schools

We turn now to a number of provisions which involve the establishment of Indian controlled schools established under the treaties. These provisions have great relevance for contemporary Indian education with its concentration on Indian controlled schools. Did these treaty provisions vest the tribe with a right to continue to operate its own schools regardless of what Congress did? A liberal interpretation of the provisions, as previously discussed in this paper, would indicate that they did.

An additional question emerges with respect to Indian controlled schools. Did the United States intend that all tribes would eventually reach the point where they would be operating their own schools with a minimum amount of Federal supervision? In other words, was it a part of the Federal educational policy that Indian schools would evolve from government and mission schools operated for the Indians to schools operated by the Indians?

It is instructive to survey the provisions for Indian controlled schools particularly with respect to the Five Civilized tribes:

Treaty with the Creeks, 1827

It is further agreed by the parties hereto, in behalf of the United States, to allow, on account of the cession herein made, the additional sum of fifteen thousand dollars, it being the understanding of both the parties, that five thousand dollars of this sum shall be applied, under the direction of the President of the United States, towards the education and support of Creek children at the school in Kentucky, known by the title of the "Chocktaw Academy", and under the existing regulations; also, one thousand dollars towards the support of the Withington, and one thousand dollars towards the support of the Asbury stations, so called, both being schools in the Creek Nation, and under the regulations of the Department of War.[32]

Treaty with the Cherokee, 1835

Article 10...the sum of two hundred thousand dollars in addition to the present annuities of the nation to constitute a general fund the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to contitute an orphans' fund the annual income of which shall be expended towards the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars in addition to the present school fund of the nation shall constitute a permanent school fund, the interest of which shall be applied annually by the council of the nation for the support of common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' and school fund the council of the Cherokee nation when required by the President of the United States shall make a report of the application of those funds and he shall at all times have the right if the funds have been misapplied to correct any abuses of them and direct the manner of their application for the purposes for which they were intended. The council of the nation may by giving two years' notice of their intention withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such a manner as they may deem most proper for their interest...

Article 11. The Cherokee nation of Indians believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; and their

> present school fund amounting to about fifty thousand dollars shall constitute a part of the permanent school fund of the nation.[33]

We can easily see from these provisions that the Creeks and Cherokees reserved in their treaties the right to operate their own schools. The Cherokees particularly reserved the right to establish a permanent fund for the education of their children. The Creeks reserved funds for scholarships in the "Chocktaw Academy" and funds for the support of their own schools as existing under the Federal regulations then in effect. If we cannot argue a permanent reserved right to establish tribal schools we can certainly argue the right of local control from these treaty provisions.

When we turn to the Choctaws we find full educational provisions for local control and support. The Choctaw provisions are particularly relevant because they indicate a progressive development of a school system. The treaty of 1825 provides:

> Article 2. In consideration of the cession aforesaid, the United States do hereby agree to pay the said Choctaw Nation the sum of six thousand dollars, annually, forever; it being agreed that the said sum of six thousand dollars shall be annually applied, for the term of twenty years, under the direction of the President of the United States, to the support of schools in said nation, and extending to it the benefits of instruction in the mechanic and ordinary arts of life; when, at the expiration of twenty years, it is agreed that the said annuity may be vested in stocks, or otherwise disposed of, or continued, at the option of the Choctaw nation.[34]

And this right is expanded in the Treaty of Dancing Rabbit Creek in 1830 when the Choctaws made provisions for college education of their children through Federal scholarships:

> Article XX. The U.S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, there shall be educated under the direction of the President and

> at the expense of the U.S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U.S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes then thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years...[35]

One has only to follow the progress of the Five Civilized tribes over a course of years to recognize just how good their school system was. In the Annual Report of the Commissioner of Indian Affairs (1877) the agent reports:

> The Cherokees
>
> They have ample provisions for the education of all their children to a degree of advancement equal to that furnished by an ordinary college in the States. They have 75 common day-schools, kept open ten months in the year, in the different settlements of the nation. Then for the higher education of their young men and women they have two commodious and well-furnished seminaries, one for each sex, and, in addition to those already mentioned, they have a manual-labor school and an orphan asylum.
>
> The Creeks
>
> They have 28 public schools, with 28 teachers, to whom they pay in the aggregate for their services, $11,200,...
>
> The Choctaws
>
> They furnish ample provisions for the education of their children, having fifty-four day schools, one boarding and one manual-labor school, at which there are about twelve hundred pupils in attendence.[36]

The school systems continued to expand and by 1893 the Choctaws had forty students attending colleges in the East.[37] Almost every

Commissioner's Annual Report includes a census of the children in school, number of schools and academies, and the amount spent by the tribe on education.

The Five Civilized Tribes continued their educational systems until the extinguishment of the administrative branches of their tribal governments prior to Oklahoma statehood. But the Choctaws and Chickasaws continued some of their academies as late as 1929. During the Senate Indian Committee's field hearings in 1929 in Oklahoma, a delegation of Choctaws presented a petition which had been drawn up in a convention held prior to the Senate hearings. It asked for the merger of Indian and public schools:

> We recall with pride the large sum of money we spent upon our tribal schools while our tribal government existed. We recognize our tribal schools as having been the most beneficial influence in our tribal life. But we believe the time has come when they should be discontinued. The Atoka Agreement provides that whenever the Choctaws and Chickasaws should be required to pay taxes for the support of schools their coal and asphalt royalties should be disposed of for their equal benefit in such manner as they might direct. Upon the advent of statehood all members of the tribes were compelled to pay taxes upon their personal property, which taxes were applied toward support of the State schools. Notwithstanding, they have been compelled to pay taxes for the support of the schools of the State, the Federal Government has continued to operate the tribal schools with the coal and asphalt fund. When the fund became inadequate the Government began to use and is still using other tribal funds to make up the deficiency, in violation of our treaties with the Government.[38]

The lack of space precludes and exhaustive analysis of the treaty educational provisions of the Five Civilized tribes based upon the historical developments following the ratification of their treaties. Such an examination would most probably indicate a reserved power in the tribes to operate their own school systems that survived the dissolution of the administrative arms of their governments.

Similar provisions for Indian control of schools can be found in other treaties. One of the most specific involves the Chippewas of the Mississippi. In a treaty signed in 1855, the United States agreed to contract services with the tribe when it desired to do so:

> Article 4. The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for purposes of education, for blacksmiths, and assistants, shops, tools, iron and steel, and for the employment of farmers and carpenters, shall be paid over to them as their annuities are paid: Provided, however, that whenever, in the opinion of the Commissioner of Indian Affairs, they fail to make proper provision for the above-named purposes, he may retain said amounts, and appropriate them according to his discretion, for their education and improvement.[39]

It is clear, when we place the legal and historical developments of the Five Civilized tribes together with the treaty provisions and subsequent histories of other tribes, that part of the Federal policy regarding Indian education was the development of local, Indian controlled schools. This policy is evident when one considers that many educational provisions in treaties provide for the schools "in the nation" or inside the tribal reservation.

Educational Provisions of Agreements

One cannot stop the analysis of educational provisions within the formally ratified treaties because the United States did not stop dealing with the tribes on a negotiating basis of some formality until 1909 when it signed the last of the formal agreements. Since that time few policies have been put into effect that did not have either

Indian support and consent or were made to look as if Indian consent and approval had been obtained. Even during the termination days, Senator Watkins and Representative E. Y. Berry did exhaustive gymnastics to make the record show a form of Indian consent to the termination provisions.

The agreements do not as yet have an established status within the field of Indian law. Cohen's Federal Indian Law generally calls them "legislative oversights" attempting to imply that Congress would have included their provisions in the treaties had it realized the complexity of the situation originally. Such an explanation will not stand close examination. In many instances, the treaty was the best bargain the United States could get at that time and the agreement which followed the treaty by several decades was a land concession made by the tribe at a time when it was almost impossible for the tribe to refuse to cede lands or make other concessions. Agreements must, because of the blackmail nature of their negotiations, be interpreted strictly in a contractual manner against the United States and interpreted as if they were treaties indicating that the bargain process must have been a part of the negotiations and that therefore Indians cannot be presumed to have lightly surrendered their lands and rights.

The agreements naturally form a continuing record of the legal relationship between the tribes and the United States. In most cases they are additional footnotes or expansions of the major treaty document linking the tribe with the United States. In the statute confirming the Sioux agreement of 1889, which was of dubious legality, section 19 had the following qualifying condition:

> That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and

> sixty-eight, and the agreement with the same approved February twenty-eighth, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act are hereby continued in force according to their tenor and limitation, anything in this act to the contrary notwithstanding.[41]

Without passing on the legaility of the 1877 act which has never been considered valid by the Sioux Nation, the fact remains that in the 1889 agreements the United States does its best to relate its subsequent amendments with preceding treaty law in order to indicate compliance with the treaty article on its part. This demonstration of good faith was required in many instances simply to get the Indians to agree to meet with the United States commissioners.

In the agreements we find the same variety of provisions concerning the education of Indians as we did in the treaties themselves. In this same Sioux agreement of 1889 we find that:

> ....there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of one million of dollars, which sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time this act takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians....[42]

Instead of providing a fund dependent upon the sale of certain tracts of lands or the cession of lands in the agreements the government promised permanent funds to be established of definite amount appropriated from regular Treasury sources. These funds are to be expended for educational and other purposes. The intent of these articles is to provide a permanent source of education and welfare funds for the use of the tribes. When these individual tribal funds are later converted into general Federal appropriations for the welfare of Indians this conversion follows the treaty and agreement provisions in determining the intent of the United States to provide services for the tribes.

One would have to conclude, therefore, that the present Federal appropriations for Indians in the field of education are in many instances vested rights deriving in origin from the treaties and agreements of the tribes and the subsequent modifications of the treaty and agreement promises by the United States. In a real sense we can derive more specific requirements from the treaties and agreements on an individual tribal basis by indepth research into the particular treaties and agreements but in general the actions of the United States and its efforts to modify its responsibilities over the past century have resulted in vesting in Indians a Federal right to education and welfare from the Federal government.

In the act of May 18, 1916, the United States finally shouldered its responsibilities and provided that its general appropriations would be used to provide services to Indians and that tribal funds would no longer be used for general service provisions. The act made it mandatory for the Secretary of the Interior to make a report on the previous use of tribal funds for administrative purposes and that following submission of the report:

> ....no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect....[43]

In the acts of Congress following this law we see a merging of former treaty provisions and the new general appropriations for Indians assumed voluntarily by the Federal government.

The treaty issue is not dead among Indians. It still remains as one of the most viable and emotional of all the topics in the Indian field. Extensive research would be needed to indicate the extent to which the United States remains liable to individual tribes for particular services. What is most important is the clear indication over nearly a century of the Indian interest in education, their willingness to expend their own funds for education, and the gradual recognition by the Federal government of its treaty and agreement responsibilities for Indian education.

Footnotes

1. 58 SCt. 794 (1938).

2. Chippewa Indians of Minnesota v. United States, 80 Ct. Cl 410 (1937).

3. Mille Lacs Band of Chippewa v. United States, 46 Ct. Cl. 424 (1911)

4. Indians of the Fort Berthhold Indian Reservation v. United States, 71 Ct. Cl. 308 (1932).

5. United States v. Stotts, 49F(2d) 619 (1931).

6. Loman v. Paullin, 152 P. 73 (1915).

7. Seminole Nation v. United States, 62 S. Ct. 1049 (1942).

8. The series of treaties signed with the Sioux bands in 1865, for example, provide this power. 14 Stat. 699, 14 Stat. 723, 14 Stat. 731, 14 Stat. 739, 14 Stat. 735, 14 Stat. 743, 14 Stat. 747.

9. For example, the Supplemental Articles to the Delaware Treaty of 1829, (7 Stat. 327).

10. 12 Stat. 981.

11. 11 Stat. 729.

12. 11 Stat. 743.

13. 28 Stat. 314.

14. 28 Stat. 318.

15. 84 C. Cls. 16 (1936).

16. 84 C. Cls. 16, 26.

17. 84 C. Cls. 16, 26-28.

18. 84 C. Cls. 16, 40.

19. 15 Stat. 635.

20. 7 Stat. 203.

21. 7 Stat. 234.

22. 7 Stat. 429.

23. 7 Stat. 195.

24. 10 Stat. 949.

25. 7 Stat. 160.

26. 10 Stat. 1053.

27. 14 Stat. 657.

28. 7 Stat. 210.

29. 7 Stat. 240.

30. 7 Stat. 328.

31. 7 Stat. 431.

32. 7 Stat. 307.

33. 7 Stat. 478.

34. 7 Stat. 234.

35. 7 Stat. 333.

36. p. 109-110.

37. Annual Report of the Commissioner of Indian Affairs, 1893, p. 146.

38. Survey of Conditions of the Indians in the United States, Senate Committee on Indian Affairs, Part 14, 1930, p. 5383.

39. 10 Stat. 1165.

40. The revised Cohen.

41. 25 Stat. 888, Sec. 19.

42. Ibid., Sec. 17.

43. 39 Stat. 123, 158-159.